CAPITAL PUNISHMENT AND BRITISH POLITICS

CAPITAL PUNISHMENT AND BRITISH POLITICS

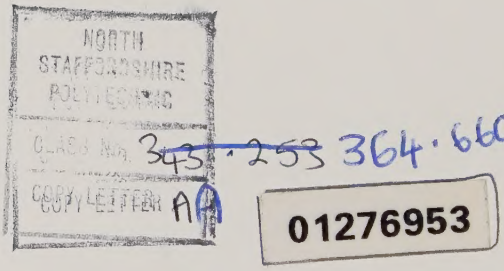
The British Movement to Abolish the Death Penalty 1945-57

JAMES B. CHRISTOPH

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS
CHICAGO 60637

GEORGE ALLEN AND UNWIN LTD.
LONDON, W.C.1, ENGLAND



Library of Congress Catalog Card No. 62-12639

PUBLISHED 1962. SECOND IMPRESSION 1968
PRINTED IN THE UNITED STATES OF AMERICA

INTRODUCTION

THIS book is an attempt to illuminate the process of political decision-making in contemporary Britain by focusing on a single controversy, the question of the proper penalty for the crime of murder. The study is limited to a recent chapter of this age-old dispute and deals primarily with the period from the end of the Second World War to the passage of the Homicide Act of 1957, an event that many believe to be a new departure in the criminal law of England. By treating in some detail the elaborate process by which the clash of ideas and interests eventuated in a new government policy it may be possible for us to test existing theories of official decision-making in Britain and extract relevant data for the theories of the future.

I suppose the book might have been entitled, with apologies to Stephen K. Bailey, *Parliament Makes a Law*. Like Bailey's pioneering study of the Employment Act of 1946, it is a case study of the origins and course of an important piece of modern legislation, and it emphasizes the roles and interplay of official and unofficial groups in politics. There is an important difference between this study and Bailey's work on the Employment Act, however, beyond the obvious fact that he dealt with the American Congress and I am dealing with the British Parliament. The present subject is an issue that is social and moral rather than economic in character, and one that stirred a controversy which touched the emotions of a vastly greater public than is usually involved in parliamentary struggles. It created a host of political problems not generally aroused by issues that are followed only by special sections of the nation. It is one of the purposes of these pages to show the special effects which issues such as the capital punishment dispute have on the process of government in political systems such as the British.

To use a case study to make observations about a larger system inevitably raises the question of typicality. I must acknowledge at the start that the capital punishment controversy was a strange affair and can by no means be called typical or representative of the kind of problems that leaders of Parliament face every day. It involved procedures seldom used in ordinary legislative matters; it called forth unusual dilemmas and roles for the Cabinet, the political parties, and the House of Lords; and it embroiled the nation in heated constitutional disputes. It is in fact its atypicality that makes the case interesting and rewarding, for in many ways it put the instruments of British government and politics to the hard test and

revealed their strengths and weaknesses. One can argue that more can be learned about a political system by examining its behaviour under stress than from the search after the average case. In another sense, however, this atypical case illustrates the typical in the British political process, for it exemplifies the strict limits of 'independent' parliamentary law-making and reinforces the familiar concept of the supremacy of Cabinet leadership in politics.

The reader should be warned that the author is a political scientist and not a sociologist, criminologist or polemicist, and that what follows is not an attempt to analyze the substantive merits of the cases for or against the death penalty for murder. These can be found easily in other places, some of which are listed in the bibliography. Naturally the arguments of both sides figure in this account, but always they are viewed as ingredients in a political conflict and not as subjects for critical examination. Greater space has been given the activities of those who would abolish the penalty than those of their opponents, but this is only because as attackers of the status quo they were more active and articulate. Even a military historian cannot be all places at once, and often for the sake of a coherent narrative he must write from a particular vantage point.

To write the story of very recent events requires special tools. In addition to the usual sources such as the debates of Parliament, official documents, press reports and polling results, I have relied heavily upon interviews that I had with a number of persons active in the controversy over the past two decades. Most of them have freely allowed me to cite or quote their remarks, although occasionally a person still in a sensitive position has requested that I not identify him as the source of my information, and I have not broken this confidence.

Many persons freely contributed to the making of this book. I am particularly indebted to the following persons who were involved in the controversy as Members of Parliament and who shared their recollections and opinions with me: Sir Beverley Baxter, J. Chuter Ede, John Eden, Edward Heath, H. Montgomery Hyde, Peter Kirk, Sir Hugh Lucas-Tooth, Nigel Nicolson, Reginald Paget, John Paton, Kenneth Robinson, and Sydney Silverman. Viscounts Astor, Templewood and Tenby and Lord Chorley were equally generous in interpreting events in the House of Lords. Francis Graham-Harrison of the Home Office provided me with useful material on the Royal Commission on Capital Punishment.

I also owe much to my conversations with Mrs. Theodora Calvert, Miss Cicely Craven, Frank Dawtry, Mrs. Peggy Duff, Ian Gilmour, Victor Gollancz, Christopher Hollis and Arthur Koestler, all participants in the politics of abolition. The staff of the British

Institute of Public Opinion and Leonard England of Mass-Observation kindly made available the results of public opinion polls taken by their organizations. I find it difficult to express the fullness of my debt to the staff of the Howard League for Penal Reform for their generosity in providing me with information and valuable contacts. Although he never attempted in any way to influence the results of my inquiry, the Secretary of the League, Hugh J. Klare, was extremely helpful at all of its stages. I was aided materially by his comments and those of Professor Leon D. Epstein, of the University of Wisconsin, on earlier drafts of the manuscript.

I am also indebted for useful advice to Professors William Robson of the London School of Economics and Political Science and Harold Zink of Ohio State University.

Further thanks are due to the London School of Economics and the British Museum for the use of their libraries; to the Graduate School of the Ohio State University for a postdoctoral fellowship which enabled me to spend a year in England gathering materials; and to Jean McConnell and Colette Armstrong for typing the manuscript.

For encouragement and honest criticism, there was no one quite like my wife, Natalie Kunz Christoph.

Ohio State University
May, 1961

CONTENTS

CHAPTER 1

CAPITAL PUNISHMENT THE LAW OF MURDER AND THE GENESIS OF REFORM

CAPITAL PUNISHMENT IN ENGLISH HISTORY

THE controversy over capital punishment is not new to the British people. Its roots lie deep in the country's history, and its battles have been waged on and off for almost two centuries. To understand the events covered in this study it is necessary to dip briefly into the antecedents of contemporary practices and opinion. That this should be important in analyzing British institutions is almost self-evident. 'The effect of centuries of the same mental outlook is particularly conspicuous in our attitude to penal questions,' wrote a former Home Secretary. 'We do not like troubling ourselves over established institutions and practices, and unless we come violently up against them, we accept the traditional verdict and comfort ourselves with thinking that we are really applying to them up-to-date tests.'[1]

This chapter aims to do two things: to sketch out a short history of the capital punishment agitation from the late eighteenth century to the end of the Second World War, and to describe the law of murder in 1945 and indicate the nature of its application.

The story of the extension and later constriction of the death penalty for crimes in England has been told many times. Inasmuch as the present study focuses chiefly on the latest bout of a perennial conflict, only the bare bones of a lengthy history need be laid out here. Fuller accounts can be found in the vast number of books on the subject published in England, notably Professor Leon Radzinowicz's vivid and authoritative *A History of English Criminal Law and Its Administration from* 1750.[2]

From the thirteenth century, when hanging was substituted for mutilation as the standard punishment for all serious crimes, until the early nineteenth century, the British belief in the justice and propriety of capital punishment went virtually unchallenged. No one knows with certainty how many persons were hanged during this period, but the chronicles of English life indicate that the rope and the gibbet occupied an established place in the routine of the

townsmen. 'The black cap and the tolling bell became the stage properties of an almost daily ceremony,' comments Lord Templewood. 'The puppet hangman delighted generations of children in Punch and Judy shows. Hanging was, in fact, accepted in the daily round of ordinary men and women who were neither cruel themselves nor insensitive to what was squalid, sordid or brutal, and the gallows came to be regarded as one of the arks of the British covenant.'[3]

The exact number of capital offences during this period remains obscure, but it is known, for example, that during the eighteenth century hangable crimes increased manyfold, from about fifty in 1700 to between 220 and 230 in 1800. Furthermore, as Professor Radzinowicz points out, each statute was so broadly framed that the actual scope of the death penalty was frequently three or four times as extensive as the number of capital provisions would seem to indicate.[4] Included in this so-called Bloody Code were offences such as stealing turnips, consorting with gypsies, damaging a fishpond, writing threatening letters, impersonating out-pensioners at Greenwich Hospital, being found armed or disguised in a forest, park, or rabbit warren, cutting down a tree, poaching, forging, picking pockets, and shoplifting.[5] The early penal reformer Sir Samuel Romilly spoke truly when he told the House of Commons that 'there was no country on the face of the earth in which there has been so many different offences according to law to be punished with death as in England.'[6]

This wholesale increase in capital offences was not a natural development. In other European nations during the same period, the number and severity of punishments had declined markedly, especially under the influence of the Enlightenment. Without question the major cause for the opposing trend in Britain was the social and economic chaos that accompanied the early stages of the Industrial Revolution.

'The spreading of extreme poverty with its concomitants of prostitution, child labour, drunkenness and lawlessness, coincided with an unprecedented accumulation of wealth as an additional incentive to crime [writes Arthur Koestler]. All foreign visitors agreed that never before had the world seen such riches and splendour as displayed in London residences and shops—nor so many pickpockets, burglars and highwaymen . . . It was this general feeling of insecurity, often verging on panic, which led to the enactment, by the dozen, of capital statutes, making any offence from poaching punishable by death. And each statute branched out like a tree to cover any similar or related offences.'[7]

At the same time, the absence of an established police force (until Peel's reforms in 1829) seemingly justified the imposition of

emergency legislation inflicting the death penalty for petty crimes against property and the person. Panic laws such as the Waltham Black Act of 1722, calculated to deal with the local and temporary crises and scarcely debated at all in Parliament, often remained on the books well over a century. The judges of England uttered no protest at this sort of development; on the contrary, some of them took the lead in the movement to expand the number of capital offences, and as guardians of the Common Law they were in a position to ramify the terms of the statutes and create new hangable crimes.

The degradations and scandals of the public executions have been chronicled frequently and in ghoulish detail. They certainly played a part in influencing ameliorative legislation and continue to figure to this day in the polemics of abolitionists. A hanging day in the London of the late eighteenth century was usually a holiday for certain workers, and persons of all stations flocked to Tyburn Tree as to a sporting event or a music hall.[8] Prior to the Victorian era the execution of a child was by no means unusual. For example, in 1801 a boy aged thirteen was publicly hanged for breaking into a house and stealing a spoon. In 1808 a girl aged seven was hanged at Lynn, and in 1831 a boy of nine was hanged at Chelmsford for having set fire to a house.[9] Such practices undoubtedly were accepted, perhaps even enjoyed by the English public in general. They found support in the words not only of the sitting judges, but also of oracles of the law such as Coke, Blackstone, and Stephen, and of church leaders and influential moralists such as Paley. Such an armory of the *status quo* was not to be easily penetrated.

Numbered among those pledged to the preservation of the death penalty for an almost infinite variety of crimes were persons powerfully placed in the English structure of government, and any reform in the criminal law faced the almost uniform opposition of the Lords and the Bench. The crime level continued to soar, however, and a dedicated minority of Englishmen, uneasy over the failure of capital punishment to deter crime and sensitive to the dubious humanity of the time-hallowed remedy, began to agitate for the removal of this penalty. Around 1810 a Society for the Diffusion of Knowledge upon the Punishment of Death sprang into being, and its appeals found champions in several members of the House of Commons, notably Sir Samuel Romilly and Sir James Mackintosh. Bill after bill was introduced to eliminate hanging as the penalty for petty offences, but those that passed the House of Commons invariably met a speedy death at the hands of the upper chamber, spurred to their veto by the words of the Law Lords. For example, Romilly's bill to abolish capital punishment for shoplifting of goods valued at five shillings and over was passed by the Commons and

scuttled by the Lords no less than six times: in 1810, 1811, 1813, 1816, 1818, and 1820.[10] Much the same treatment was accorded Romilly's other attempts, and the result of a decade of agitation was the removal of only three of the more than two hundred hangable offences from the statute book.

Yet the forces of reform were gathering strength and major victories came more quickly than anyone could have predicted, on the basis of the experience of preceding centuries. Important as they may have been, the agitation of the abolitionists, the influence of a new concept of criminology (associated with figures such as Bentham, Beccaria, and John Howard) and the experience of continental countries were probably less responsible for reform than pressures from affected groups in the English community. Public opinion in the early nineteenth century began to turn against the extreme severity of the death penalty for minor infractions of the law, and juries rather systematically refused to convict accused persons (among them acknowledged criminals) so as to avoid responsibility for sending fellow citizens to their deaths.[11] As a result, whatever deterrent quality capital punishment possessed lost much of its sting, and crimes against property continued and even increased in this period. In desperation, highly respectable and influential businessmen begged Parliament to abandon the death penalty for dozens of crimes and substitute milder, enforceable punishments. As early as 1811, Radzinowicz reports, 150 calico printers and owners of bleaching establishments petitioned the House of Commons to have stealing from their premises removed from the list of capital offences because juries were refusing to convict the thieves. This was followed by petitions from bankers, manufacturers, even jurors, from all over England, all beseeching the same kind of action.[12]

In the year 1819 the avalanche of petitions mounted to more than twelve thousand. The perplexity of the business world was well illustrated in the wording of the following petition.

> Your petitioners as bankers are deeply interested in the protection of property from forgery, and in the conviction and punishment of persons guilty of that crime.
> Your petitioners find by experience, that the infliction of death, or even the possibility of the infliction of death, prevents the prosecution, conviction and punishment of the criminal, and thus endangers the property which it is intended to protect.
> Your petitioners, therefore, earnestly pray that your honourable House will not withhold from them that protection to their property which they could derive from a more lenient law.[13]

The House of Commons was more speedily convinced of the need

for a reduction in capital offences than were the Lords. A Select Committee of the lower chamber, appointed in 1819, amassed the first real statistics on crime in England and came forth with the moderate recommendation that capital punishment no longer be exacted for crimes against property. Many of its recommendations were accepted by the Commons, only to fall victim to the veto of the Lords, which continued to act, in the words of the *Quarterly Review*, 'as a floodgate against the tide of legislation which is now rolling so impetuously through the House of Commons'.[14] Nevertheless, the arguments of the reformers and the concern of the business community, coupled with the votes of the lower house, began to have an effect on the House of Lords, and piece by piece the more antiquated capital crimes were replaced by less final punishments. The process took the better part of two decades, and was hastened only after Peel created the modern police force and the politicians surrendered to the increased pressure of the businessmen. Capital punishment was abolished for cattle, horse and sheep stealing in 1832; for housebreaking in 1833; for sacrilege and stealing letters by Post Office employees in 1835; for coinage and forgery in 1836; and for burglary and stealing in dwelling houses in 1837.[15] At the accession of Queen Victoria in 1837, the number of hangable offences, which had stood at over two hundred at the turn of the century, had dwindled to fifteen. These included murder, arson, rioting, serious sexual crimes, robbery with violence, piracy and wrecking and a single crime against property—the theft of Government money or securities.

The tide of reform began to recede by 1840, and it took another twenty years for the remaining 15 capital offences to be reduced, or rather consolidated, to the four that have remained in the statutes until the present day: murder, treason, piracy with violence and arson in government dockyards and arsenals.[16] The early nineteenth century reformers sought two ends: to reduce the large number of offences for which the death penalty could still be imposed and restrict its application to the gravest and most atrocious crimes, and to secure eventually the complete abolition of capital punishment. They were able to accomplish much of their first purpose, but they and their successors had little success in the broader campaign for complete abolition. The annual number of hangings in England continued to decline into the twentieth century, due more to the increased use of the reprieve power than to any notable change in the criminal law. There were scattered efforts to hasten the day of abolition, however, and they deserve some notice inasmuch as they serve to indicate alternative approaches to the problem.

That Parliamentary interest in the topic continued to wax occasionally is evidenced by the appointment by the Derby Government

in 1864 of a Royal Commission with terms of reference broad enough to allow it to review the entire question of capital punishment. Among its principal recommendations the Royal Commission advocated that murder be divided into two degrees (on the model widely used in the United States), with the death penalty retained only 'for all murders deliberately committed with express malice aforethought' and 'for all murders committed in, or with a view to, perpetration, or escape after the perpetration, or attempt at perpetration of any of the following felonies: Murder, arson, rape, burglary, robbery or piracy.'[17] A second major recommendation was that infanticide should be differentiated in law from murder; a third called for the prohibition of public executions. Five members of the Royal Commission, including John Bright, were prepared to go further and advocate the total abolition of capital punishment, although one of these hedged his position by insisting that this day must be postponed until public opinion was ready to accept it. This was a minority viewpoint, however, with no impact on the times.

There was a moderate amount of Parliamentary support for the Commission's report, but only one of its major recommendations—the ending of public hangings—was immediately accepted.[18] Infanticide was not removed from the category of murder until 1922, and despite several attempts to work out a division of murder into different degrees, no statutory change along these lines was adopted until 1957—which takes us far ahead of our story. No fewer than six attempts were made between 1866 and 1881 to frame categories of murder that took their cue from the Royal Commission's suggestions. All failed of passage for one reason or another. For example, shortly after the Commission had reported, the Lord Chancellor introduced a bill in the House of Lords to create the two classes of crimes called for in the Report. The Lords split evenly on the Second Reading of the bill, thirty-eight peers in favour and thirty-eight opposed, and the Lord Chancellor withdrew it in order to substitute a new clause, limiting the definition of murder to cases in which the accused intended to kill or do grievous bodily harm to the life of the person killed or any other person. In this form the bill was passed in the House of Lords, but a sudden change in government doomed it in the House of Commons. Bill after bill was introduced in the next fifteen years, often with the support of an array of legal scholars, but in each case some objection was raised to either the principle of establishing degrees of murder or the rationale and feasibility of the particular formula laid down in the bill, and no changes in the law came about.[19]

Many students of law and criminology came to the conclusion that they had been seeking a will-o'-the-wisp. Some of them concluded that distinctions between degrees of murder could be made

only by juries (with their opportunities to recommend mercy) or by the Home Secretary (as the official who could grant reprieves through the Royal Prerogative of Mercy), and therefore they chose to accept the ancient law and trust in modern humaneness. Still others considered the total abolition of capital punishment the only just and workable solution to the problem. Thus the two camps remained essentially unchanged by the proposals of the mid-Victorian politicians.

The futile attempts of the seventies and eighties were followed by forty years of comparative inactivity during which the law of murder underwent few changes. The Children's Act of 1908 abolished the death penalty for persons under sixteen years of age (later raised to eighteen), and the Infanticide Act, passed in 1922 and amended in 1938, reduced the penalty for women who killed their children in a certain interval after birth from murder to manslaughter. Such modifications of the law were not the product of a groundswell of sentiment favourable to abolition. They came instead in the course of rather routine examinations of the criminal law and were unrelated to agitation against capital punishment. As will be noted later, several groups continued to press the abolitionist case during this period, but their efforts were slight, uncoordinated, and politically ineffective.

There was a quickening of interest in the subject in the 1920s. Why this should occur then cannot easily be explained. Two proximate influences undoubtedly aided in reviving public interest and encouraged abolitionists to press for renewed action. The first was the founding of two interest groups that stimulated a wider public concern over the fate of the English criminal. The Howard League for Penal Reform, founded in 1921, decided early in its history that one of its objects would be the removal of the death penalty for murder; and in 1925 a related, but separate, organization, the National Council for the Abolition of the Death Penalty, came into being as a coordinating body embracing many varieties of abolitionists. The character of these groups, as well as their early activities, will be considered later in this chapter. Here it is sufficient to note their presence in the 1920s as a force in bringing the question once again to the fore in public discussion.

The second factor in the temporary resurgence of abolitionist sentiment was the coming to power of the Labour Party (if only to form minority governments in 1924 and 1929). For many years organized abolitionists had had trouble in getting favourable responses from the older political parties. They held out the hope that the advent of a Labour government would signal a change in political climate sufficient to allow a full-scale reexamination of the role of capital punishment. In this they were to be only partially

satisfied. In this period they got not a new law but a Select Committee, appointed by the MacDonald Government late in 1929, made up of M.P.s of each of the major parties, and presided over by a Labour ecclesiastic.

The principal recommendation of the Select Committee on Capital Punishment was that legislation should be introduced to abolish capital punishment for an experimental period of five years.[20] In taking this position the Committee clearly rejected the idea of dividing murder into two or more degrees. They concluded that the State's use of the Royal Prerogative of Mercy was in itself a functional equivalent of grading murders, and they saw it as insufficient to cope with the fundamental weaknesses of capital punishment. The Committee's report was far from unanimous, however. The Conservative members as a body refused to sign the report, thus fatally weakening the authority of the deliberations and imparting a partisan flavour to the recommendations hardly conducive to their easy acceptance in the difficult days of 1931. This division within the Committee's ranks, coupled with the fall of the Labour Government shortly afterwards, ruled out the possibility of any substantial change in the law for some years to come. Surviving the hectic events of that session of Parliament was not only a valuable compendium of evidence and statistics on the actual effects of capital punishment (or its absence), but also an unarticulated feeling that the cause of abolition was likely to fare better at the hands of Labour and Liberal politicians than with the Conservatives.

Occasionally in the doldrums of the thirties Private Members' Bills aimed at translating the Select Committee's recommendations into law were introduced into the House of Commons, but they got nowhere. The next important occasion for the abolitionists was the presentation to Parliament by the Chamberlain Government of the Criminal Justice Bill of 1938. This sweeping piece of legislation, which owed much to the findings of several important departmental committees (on, *e.g.*, persistent offenders, young offenders, corporal punishment, etc.) and to the persistence of the vigorous and influential Prison Commissioner, Sir Alexander Paterson, was heralded on all sides as embodying long-needed reforms in the chief areas of criminal law and administration. The bill included no mention of capital punishment. Its sponsor, Home Secretary Sir Samuel Hoare, insisted later that to have included an abolitionist clause would have been to stir up controversy that might have endangered the rest of the bill.[21] Abolitionists in the House of Commons attempted to salvage the cause by putting down a motion 'that this House would welcome legislation by which the death penalty should be abolished in time of peace for an experimental period of five years.'[22] A

sparsely-attended Commons actually passed the motion on a free vote, 114 to 89, but the Government refused to embrace the principle by amending their bill. Of importance to later events was the division itself, which saw ten future Labour Ministers, including a future Home Secretary, counted among the abolitionists. Debate on the Criminal Justice Bill dragged on into 1939, but with the outbreak of war the Chamberlain government decided not to grant time for the remaining Stages of the bill, and it was stillborn. The leaders of all parties gave assurances that they would press for its resurrection at the cessation of hostilities.

THE LAW OF MURDER IN 1945

Reformers of the law must begin with law as they find it at the moment. In order to comprehend the boundaries of the recent controversy over capital punishment, it is necessary to understand the peculiar character of the law of murder as it stood at the end of the historical period described above. What follows is a skeletal summary of the law in 1945.[23]

The salient fact is that the punishment for murder prescribed by English law was, and had been for centuries, the punishment of death. Except in two special classes of cases,[24] a judge had to pronounce this sentence upon a person convicted of murder: he had no discretion to impose any less severe sentence. In actual peacetime practice, murder was the sole crime for which the death penalty was exacted, and it was the only crime for which the court had no discretion to set one of several possible punishments.[25] This stood in contrast to the process by which punishments were decided in the case of other felonies such as burglary, rape, or malicious wounding, where wide discretion lay in the hands of judges, who were permitted to take into account both the particular offence and the particular offender, and pronounce sentence accordingly.

The special character of the punishment for murder would seem to presuppose a uniformity in the nature of the crime and the culpability of the offenders. Few persons today would argue that this is the case in fact. In the words of the Royal Commission on Capital Punishment, '. . . there is perhaps no single class of offences that varies so widely both in character and in culpability as the class comprising those who fall within the comprehensive common law definition of murder.'[26] Crime records tell us that murderers may be men, women, or children; they may be normal or feeble-minded, neurotic, epileptic, or insane. The crime may be pitiable and even humane (as in the case of some 'mercy killings'), or brutal and callous in the extreme. The murder may have taken place in 'hot blood', or it may have been coldly premeditated. Murderous

intent may be unmistakable, or it may be absent, as in the case of certain accidents. Murders vary and reveal motives both base and highminded: certainly the range would include cupidity, revenge, lust, jealousy, anger, fear, pity, despair, duty, self-righteousness, and political and religious fanaticism.

Yet the law in Great Britain remained rigid at the formal level. It reflected the ancient belief that every murderer must forfeit his life because he has taken another's life. Nevertheless it had been long apparent that public sentiment would not tolerate the infliction of the death penalty upon all murderers regardless of circumstances. In practice the gap between the letter of the law and the actual treatment of murderers was filled by a number of devices that could mitigate some of the inflexibility. Specifically, a murderer might escape hanging because of actions taken by any one of three parties to the judicial process: the prosecution, the jury, and the Home Secretary.

Mitigation at the stage of prosecution was possible, though rare. The Director of Public Prosecutions told the Royal Commission on Capital Punishment that 'in cases where he feels doubt whether, on the evidence before him, the charge should be murder or some lesser offence, such as manslaughter or infanticide, his instinct is to choose the lesser charge.'[27] Such a decision could be overruled by magistrates in England and Wales, but it was final in Scotland, where greater elasticity in the law of murder prevails. Thus in some cases, admittedly few, initial decisions by the prosecution might lead to a penalty less irrevocable than death.

More often it was the jury that tempered the rigidity of the law. This was done in several ways. First, juries were known to take the mitigation of the law into their own hands by returning unwarranted verdicts of acquittal or manslaughter. Opinions vary considerably as to the incidence of this type of verdict, but we have the opinions of such diverse sources as Lord Chief Justice Goddard, Lord Justice Denning, Sir John Anderson, and the Howard League for Penal Reform that juries occasionally did return a verdict completely unwarranted by the facts, which substantially lessened the penalty that could be imposed on the guilty person. Whether this occurred because juries disapproved of capital punishment, or because they were unwilling to bear the responsibility of inflicting death by hanging, or because they hesitated to see it imposed in certain types of cases, does not matter here. The motives undoubtedly cannot be understood thoroughly, but the effect of such action is clear.

Secondly, it was always possible for a jury to recommend to mercy a person it convicted of murder. This they had to do spontaneously, for no judge prompted them or reminded them of this possibility in his charge to them. It is believed that in some cases

a recommendation to mercy was added to salve the scruples of a juror opposed to capital punishment, or as a compromise between a verdict of murder and one of manslaughter. Often, however, the facts of the case provided a reason—perhaps 'pitiable circumstances' (infanticide by an extremely impoverished mother, or the survival of one partner to a suicide pact), or extreme provocation, or the absence of malicious intent. Home Office statistics show that in the fifty-year period 1900-1949 a recommendation to mercy was made in 39 per cent of all murder convictions, and that reprieves were granted to 74 per cent of those who were so recommended, compared to 28 per cent of those who were not.[28] Jury sentiment did not save every convicted murderer from the gallows, but it was obviously a strong factor in the Home Secretary's decision on the fate of an individual life.

There were additional ways by which juries could act to prevent the State from executing murderers whom they convicted. Here the possibilities differ according to whether the crime occurred in England and Wales or in Scotland.

It was fairly common for insanity to be pleaded as a defence, inasmuch as under English law an insane person could not be hanged. Insanity is a legal, not a medical, term, and the court had to be convinced that at the time of the commission of the crime the accused was insane under the provisions of the famous McNaghten rules. These rules, which provide the test for legal insanity, were laid down by the Law Lords in 1843 and have remained unchanged ever since, despite the rise of modern psychiatry and criminology, and despite heavy criticism from many quarters. Judges are fond of quoting the essence of the rules in their charges to juries in cases where the defence of insanity has been entered:

. . . to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.[29]

Those murderers who can squeeze through this needle's eye are committed to the prison for the criminally insane.

The question of what to do about the McNaghten rules has bedevilled British legal reformers for decades, and naturally enough the vulnerability of the rules has been played upon by abolitionists on numerous occasions, as will be seen later. It is sufficient here to note that the plea of insanity presented a conceivable but difficult method of overcoming the inflexibility of the single punishment for murder.

The law of murder in Scotland differed in several respects from that of England and Wales, and for many years one group of law reformers had been urging the importation of Scottish doctrine into English law. The major differences concerned two technical concepts, 'constructive malice' and 'diminished responsibility'.

Under the English common law, a body of doctrine was developed to aid the courts in distinguishing between murder and manslaughter. One of these concepts was 'constructive malice', which meant 'that if a person, while engaged in committing a felony or resisting an officer of justice, causes the death of the other person, he may in certain circumstances be guilty of murder solely by reason of the fact that the homicide was committed in the prosecution of the other offence, although it would otherwise amount to no more than manslaughter.'[30] Following this doctrine, the courts decided, for example, that if a man, intending to rape a woman, but without the least intention of killing her, squeezed her throat in order to overpower her and in doing so killed her, he was guilty of murder despite the absence of intent. The crucial difference between Scottish and English law here was that the law of Scotland did not recognize the doctrine of constructive malice or anything akin to it. The crime just described was murder in England; in Scotland it would more likely have been 'culpable homicide', or manslaughter.

The other difference concerned the determination of mental abnormality. In England, as we have seen, a person had to be extremely abnormal—insane under the McNaghten Rules—before the courts took cognizance of his special circumstances. Scottish legal precedents, on the other hand, allowed the courts to take into account lesser forms of mental abnormality. This was provided for in the doctrine of 'diminished responsibility'. Under it if a jury was satisfied that the person charged with murder, though not insane, 'suffered from mental weakness or abnormality bordering on insanity to such an extent that his responsibility was substantially diminished', the crime could be reduced from murder to culpable homicide, which carried a lesser penalty. The effect of the Scottish practice was to soften the rigidity of the McNaghten Rules by taking into account the nature of the criminal as well as the crime.

It can thus be seen that in Great Britain as a whole, but particularly in Scotland, it was possible for judge and jury to act in such a way that the death penalty may not be exacted for the commission of a homicide. This was possible, but there was no guarantee that every murder case would fall into one of these categories.

There was a final, guaranteed review of all convictions for murder, however. Here we come to the way in which the death penalty was most frequently mitigated: by the exercise of the Royal Prerogative of Mercy, which rested in the hands of the Home Secretary.[31] With-

out exception, every capital conviction was reviewed by this Minister before the law was allowed to take its course, with a view specifically to determining whether there were grounds for clemency. Prior to 1948, the effect of a reprieve was to reduce the sentence to penal servitude for life. The Criminal Justice Act of that year abolished penal servitude, and a sentence of death was commuted to one of imprisonment for life.

In making his decision, the Home Secretary could draw upon the advice of the senior permanent officials of his ministry, who had long experience in dealing with murder cases, and he had access to the records of previous cases reviewed by himself and his predecessors. Inevitably a kind of 'case law' has grown up in this area, embodying, in the words of the Home Office, 'some indication of the practice followed by successive Home Secretaries in some classes of case and of the weight given to certain considerations'.[32] Despite the presumption attached to such precedents, it was the obligation of the Minister to examine the particulars of each trial, the recommendations of the jury, the opinions (if expressed) of the judge, and the life history of the convicted. Among the kinds of murder that generally received the closest scrutiny to see whether extenuating circumstances justified a reprieve were unpremeditated murders committed in a state of frenzy, murders committed under provocation, murders committed without intent to kill, murders committed in a state of drunkenness, and murders committed by women. Following the common law principle that no insane person shall be executed, the Home Secretary by law had to order a special medical inquiry if there was any reason to believe that the prisoner scheduled to die was legally insane or so abnormal as to have not been responsible for his actions. In event that insanity or such abnormality was found by the doctors, the prisoner was removed to the prison for the criminally insane at Broadmoor.

That the use of the Royal Prerogative has been a common fixture of the administration of British justice was revealed by figures furnished by the Home Office. In the fifty year period 1900-1949, a total of 1210 persons were sentenced to death in Great Britain. Of this number, 553, or 45·7 per cent, had their sentences commuted or respited.[33] A much greater percentage of female murderers (90·8 per cent) benefited from the application of the Prerogative than males (40·3 per cent). These figures, when combined with those covering other categories (such as persons declared insane upon arraignment, found guilty but insane, etc.), help to explain why although on the average 90 persons were arrested for murder each year in Great Britain since 1900, a yearly average of only 13 were actually executed for the crime.

This section has been designed to show that the law of murder,

like English law in many other areas, had been in almost continuous evolution in the period down to 1945. The principle that capital punishment should be the generally prescribed penalty for murder had become well entrenched over the centuries, although in practice its application was increasingly limited by a combination of statutory enactment, executive prerogative, and judicial interpretation to the point where imposing the sentence of death no longer guaranteed that the ultimate penalty would be exacted. Both in its scope and its complexity, the law would have been scarcely recognized by the judges who presided over the eighteenth century assizes. Yet as fact and symbol the single penalty for murder remained, and a dozen or so Britons suffered its execution each year. That such a thing still could occur in twentieth century Great Britain continued to disturb some of its citizens, who resolved not to rest until the day capital punishment ceased to have a place in British law or society.

THE RISE OF ABOLITIONIST ORGANIZATIONS

The law of murder described in the preceding pages came under fire in the years after 1945 not only from individuals in and out of Parliament, but also from groups organized to work and agitate for the abolition of the death penalty. As these groups and their activities figure countless times in the story that follows, it is important to see who they were and what they stood for.[34]

It is necessary to begin by underlining the obvious but important fact that criminal law in Britain is national in scope and made only by the central government. In contrast to the situation in a federal system such as the American, where most of the law of murder is determined by more local political units (and where one-sixth of the states have abolished the death penalty), in Britain the policy in this area is a single policy for the entire nation made by a single legislative body, the Parliament, and part of the responsibilities of a single executive department, the Home Office. This political and legal system requires that all reformist efforts be directed at these few points of decision, and that any reform organization be truly national in character. There is no room for sectional successes by groups unable to convince the rest of the country.

As we have seen, the capital punishment question was debated intermittently throughout the nineteenth century, often as an aspect of other proposals for reform in the economic, social, and political realms. When the hanging question was before Parliament during this era, the cause of abolition usually was supported by a small coterie of reformers and occasionally by citizens' groups organized to put pressure on M.P.s and to soften a generally hostile public opinion. Most of the abolition groups were tiny and lacked staying

power, especially in periods when prospects for social reform ebbed rather than flowed. One of these groups, the Society for the Abolition of Capital Punishment, lead chiefly by Quakers, survived until the time of the first World War. Although it was periodically active —drafting and circulating petitions, submitting model bills to sympathetic M.P.s, distributing pamphlets, arranging for speakers—it caused scarcely a ripple on the surface of the accepted law of murder.

One of the Society's difficulties was that it lacked basic information on the actual effects of capital punishment on any given society. Criminal statistics were virtually unknown, foreign experience was difficult to obtain or translate into English terms, and Royal Commission reports were mainly collections of opinion. There simply was no body of reliable information upon which to build a case; nor was there the disposition or the money to undertake such research. True to the temper of the times, the reformers put their chief emphasis on the moral evils of the death penalty, often using Biblical quotations to prove the unchristian character of the punishment. The horrors of hanging and their effect on all involved were vividly portrayed. Cases in which an innocent or insane person was mistakenly hanged were recalled. The continued resort to a 'pagan barbarity' was contrasted to humanitarian advances in other areas of British life, and eminent legal scholars, humanitarians and other public figures were quoted on the evil and folly of retaining the gallows. Effective as these appeals might have been in attracting sympathy from some sectors of the population, they failed to touch many others, and clearly they were not effective in answering the perennial claim made for capital punishment, that it serves as a strong deterrent to murder. When one man's opinion can be countered only by another opinion, the status quo is seldom seriously challenged.

But more serious challenges to older institutions were on the horizon. After the first world war, interest in penal questions widened and sharpened, so that by the middle of the twenties there had come into being two active organizations concerned either wholly or partially with the fate of capital punishment in Britain. One group was broadly gauged and concerned with a wide range of penal problems; the other was a single purpose association dedicated to working solely for the abolition of the death penalty. As it turned out, their interests and memberships tended to overlap, and their activities were mutually reinforcing.

For many years the chief organized pressure for change in British penal policy has come from the Howard League for Penal Reform, a small but prestigeful association that is taken seriously by the Home Office, Parliament, and the press. The Howard League was

formed in 1921 by the union of two older societies, the Howard Association and the Penal Reform League. Its stated purpose is 'to promote the right treatment of delinquency and the prevention of crime . . . by the application to penal problems of the scientific method, and by an open-minded study of the causes and treatment of crime and penal administration at home and abroad'.[35] Its activities have been numerous, ranging over areas such as the treatment of juvenile offenders, prison conditions, probation and parole, mental instability and psycho-pathology, and forms of punishment. The interest that the League displays in specific questions may wax and wane, but it is ordinarily active in all of these areas at any one moment. As will be shown later, it was this multi-purpose character of the League that imposed some restraint upon the role it chose to play in the capital punishment controversy.

The Howard League has never been large. Its membership seldom exceeds 2,000, and it has engaged in no intensive recruiting campaigns. One gets the impression that the majority of League members are serious, knowledgable, middle-class people who are convinced that persistence, tact and conciliation will achieve their purposes better than shouting or appealing to mass emotions. The League has attempted to remain non-partisan for the sake of its members' political sensitivities and in order to keep its privileged access to the Home Office under all governments.[36] Its letterhead consistently has included the names of well known and respected citizens—a few peers, a few professors, a few lawyers, a few humanitarians, and (possibly getting closer to those who do much of the real work) many civic-minded Englishwomen. Among the small public that takes a serious interest in penal matters, the Howard League has prestige and respectability. This asset partly outweighs its relative poverty. In recent years general subscriptions have amounted to an average of £1,400 yearly, the greater part of which goes for the salaries of the two or three professional staff members who man the League's office, initiate many of its policies, and do most of its work.

The Howard League has long enjoyed a special relationship with the Home Office, especially with the Prison Commissioners. As an outside research and opinion-forming organization, it is looked to for new ideas in the field of penal policy. A list of the reforms suggested by the League and subsequently adopted by the Home Office would run to impressive length. But like so many of the British government's quasi-official auxiliaries, it is caught between the opinions of its own members and the opinions of the government department with which it must work. It serves, in the phrases of the chairman of the Prison Commission, both as an 'official opposition' to the Home Office and as a channel through which current penal

practices are communicated to its special public.[37] The present Secretary of the Howard League not only frequently rings up key civil servants in the Home Office and is as frequently rung up by them; he also belongs to the same luncheon club as the Chairman of the Prison Commission and his chief assistants. The Prison Commissioners, like so many governmental officials, are usually so preoccupied with administering day-to-day affairs that they have little time for mapping future policy. This situation, combined with the government's disposition, until very recently, to leave penal research to outside organizations, has left a vacuum that has been partly filled by the League. The League's Secretary believes that his group has some influence on almost all penal matters.[38] Few would disagree seriously with him, although it is necessary to add that this influence has been greater in areas other than capital punishment.

The sources of the Howard League's influence are several. In addition to the success its staff has had in establishing good relations with the Home Office, the League is known to maintain a store of expert information on criminal and penal matters drawn from all over the world. Its library and research facilities can provide its spokesmen with accurate and comprehensive knowledge valuable in its dealings with government departments and in presenting its case to the wider public. The very fact that its views are usually given calmly and buttressed by an array of evidence has convinced the right people that the League is sound and reliable in taking the positions it does. As an empirical-minded, discreet and responsible organization, the League has been readily accepted by the officialdom and opinion leaders in British society, who see in its character a typically British response to the issue of penal reform. No doubt, too, some people are impressed by the fact that its members seldom have a personal axe to grind or a material stake in the outcome of the League's activities. Known criminals do not flock to join the organization, and the number of prison officials in it is always a tiny minority. The dedication of its members is ideological and temperamental, not clearly self-oriented. Finally, the League consistently has had Parliamentary representation. The chairman and several members of its Executive Committee have been M.P.s and can usually be relied upon to ask League-initiated questions, introduce legislation at the bidding of the League, and express in debate views in accordance with League policy or based upon League memoranda. Sympathetic M.P.s of all parties have been loosely organized by the Howard League into a Parliamentary Penal Reform Group, which does not meet regularly but is convened, usually upon League initiative, whenever important penal bills are before the Parliament.[39] Similar representation is maintained in the House of Lords. A debate of the subject of crime and

punishment almost never takes place without an expression of the Howard League's views, whether or not they are formally labeled.

The League has been a consistent opponent of capital punishment for murder. Abolition has long been a part of its programme, and it has taken part in all important attempts to achieve it. Its actions on this question have not always been as strong or as frequent as some full-blooded abolitionists may have wished, however, and occasionally it has been accused of watering down its principles in action. Although it agrees with these people on the desirability of abolition, it has insisted upon its own tactics. There seem to be three reasons for this approach. First, not all Howard League members are abolitionists. There is a minority that agrees with and supports most of the League's actions in campaigning for penal reforms but it is not prepared to accept total abolition of the death penalty. To turn the organization into a single-minded abolitionist phalanx would be to alienate a segment of the membership. A second and more important reason also relates to the fact that the League is a multi-purpose group. As we have seen, the most numerous of its activities involve and require a special relationship with the Home Office, the Prison Commissioners, and prison officers' associations. Especially in recent years, the staff of the League have given special attention to the task of promoting better relations between prisoners and the officers who are in direct contact with them—a group of insufficiently paid, insufficiently well-regarded men who spend much of their time performing essentially negative tasks. The League has made some progress in softening old rigidities and developing better attitudes in this group. Some of the prison officers have come around to the Howard League's viewpoint on this question; some have not. But almost all of them still feel that they need protection against the resentment of prisoners, and most of them believe capital punishment to be a necessary protection. Thus on the issue of capital punishment the Howard League must weigh priorities. In pressing for abolition it has decided to proceed quietly and discreetly, for it fears that much of its work with prison officers will be jeopardized if the impression gets established that it is composed of wild abolitionists, oblivious of apparent dangers to the lives of prison personnel. Finally, for several decades the League was aware that it did not have to press vigorously for abolition because there existed another reform group, organizationally separate but including many of its members, whose sole purpose was the attainment of this goal. This brings us to the second major abolitionist group in existence in 1945, the National Council for the Abolition of the Death Penalty.

The National Council owed its existence to the inspiration and labours of a single man, E. Roy Calvert. Calvert, a young Quaker,

combined the passion of the religious humanitarian with the empiricism of the social scientist. It was his aim to weld together an organization capable of convincing the British public in general, and Parliament in particular, of the ineffectiveness as well as the immorality of the death penalty. In 1925 Calvert organised a Central Consultative Council for the Abolition of Capital Punishment, composed of representatives from ten religious and reform societies.[40] This council, in turn, created the National Council for the Abolition of the Death Penalty, of which Calvert became secretary. The beginning was small and unheralded, and the future was uncertain. The nominal membership fee brought in little income, and only through donations was the group able to pay Calvert and maintain a small Victoria Street office.[41] At no point in its 23-year history did the National Council membership rise above 1,200, and annual membership fees and donations seldom passed £600. Although it was a mere speck in the panorama of British associational life, its members were devoted and its leaders able.

The philosophy of the National Council was an extension of Roy Calvert's personality and approach. The following excerpt, taken from one of the group's publications, was a typical Calvert sentiment:

> Since its formation, the National Campaign has sought to conduct its campaign on strictly educational lines, basing its claim to public support upon a careful consideration of the known facts concerning the experience of countries which have dispensed with capital punishment and upon an examination of the ethics and social effects of the penalty itself. No appeal has been made or will be made to unhealthy sensationalism, the incitement of which is indeed one of the strongest arguments against capital punishment.[42]

In the middle 1920's, when prospects of getting Parliament to re-examine the law of murder were fairly dim, Calvert concentrated on gathering and communicating statistics on the experience of those countries that had abolished capital punishment, in order to buttress his belief that hanging had no visible deterrent effect on murderers. Working with the Howard League, he amassed and systematically organized a large body of criminal statistics and took much of his case from them. The result was *Capital Punishment in the 20th Century,* the first really dispassionate and scientific argument for abolition in Britain. The many tracts that have appeared since its publication in 1927 owe large measures to Calvert's pioneer effort. The impact of this small volume was soon felt in Parliament, where a motion was laid down a year and a half after the book appeared which led to the appointment of a Select

Committee on Capital Punishment of 1929. Roy Calvert and other NCADP officers provided the Committee with systematic data and orderly arguments, and although the Select Committee's recommendation that the death penalty be suspended experimentally for five years was never acted upon, its Minutes of Evidence served to dramatize the issue and provided strong ammunition for the abolitionist cause in the next two decades.

The National Council issued numerous tracts and leaflets in the early 1930's. In addition to Calvert's book, which emphasized abolition experience of other Western nations, pamphlets appealing to religious sentiments were circulated, among them the writings of William Temple, then Archbishop of York and later Archbishop of Canterbury. A periodical called *The Penal Reformer* aired the views of Calvert and others, and a loose-leaf set of *Notes for Speakers* was made available for use by National Council members, school debaters, and Members of Parliament. Activity there was, but it would be a mistake to inflate it into success. The hopes raised in 1930 were smashed by the events of 1931, and the abolitionists remained in the doldrums for another 15 years, speaking and publishing and pressuring but having little impact. Roy Calvert died unexpectedly in 1933, and his place was taken by John Paton. During Paton's twelve-year tenure the depths of the depression were reached, followed almost immediately by the war. The National Council somehow survived this period, although its activities had to be sharply curtailed and the general climate of opinion was decidedly uncongenial. Membership declined to 750, the London office had to be given up, and Paton ran the organization from his home. Not all activity ceased, however. Sympathetic M.P.s continued to put questions in Parliament and vainly introduced Private Members' Bills; candidates in the 1935 General Election were sent questionnaires; a small proportion of the many letters written by Paton appeared in the press; and, in the phrase of a Council report, 'various groups allowed the Secretary and others to state their views' on capital punishment'.[43] Toward the end of the war, the group moved temporarily into the Howard League Offices, and its Executive Committee launched a new campaign, based upon the high hope that with the advent of a new Parliament and a Labour Government the tide would finally begin to run in favour of abolition. The Council was guaranteed at least two spokesmen in Parliament, for both Paton and his wife were elected Labour Members in 1945. The revived NCADP found as Paton's successor Frank Dawtry, a former Prison Welfare Officer and long-time member of the Howard League.

It was still a small, politically slight body of people, however, convinced of the inevitability and righteousness of their cause but

naïvely optimistic over the prospects for changing the law and overcoming the fears and images of the British public. Because it was a single-purpose organization the NCADP could concentrate its resources and speak more forthrightly than the Howard League. But it spoke for a small idealistic minority, not for the British public. The two groups were quite aware that they were not in a position to negotiate from strength outside Westminster. To achieve their goal, the organized abolitionists needed an upsurge of support both in the general public and in Parliament, and this they could not expect to get without effort and luck.

NOTES

[1] Viscount Templewood, *The Shadow of the Gallows* (London, 1951), p. 15.

[2] Volume I, (London, 1948).

[3] Templewood, *op. cit.*, p. 17.

[4] Radzinowicz, *op. cit.*, Vol. I, p. 5.

[5] Arthur Koestler, *Reflections on Hanging* (London, 1956), p. 13. As the outcome of a single Assize, 13 persons were hanged for associating with gypsies. *Report from the Select Committee on Capital Punishment* (London, 1931), p. viii.

[6] *Hansard's Debates of the House of Commons,* XV (1810), 366.

[7] Koestler, *op. cit.*, p. 24.

[8] For example, see Templewood, *op. cit.*, pp. 20-23.

[9] G. Gardiner and N. Curtis-Raleigh, 'The Judicial Attitude to Penal Reform,' *The Law Quarterly Review* (April 1949), p. 8, cited in Koestler, *op. cit.*, p. 21.

[10] It finally passed in 1832.

[11] 'A jury would assess the amount taken from a shop at 4s. 10d. so as to avoid the capital penalty which fell on a theft of 5s. In the case of a dwelling, where the theft of 40s. was a capital offence, even when a woman confessed that she had stolen £5, the jury notwithstanding found that the amount was only 39s. And when later, in 1827, the Legislature raised the capital indictment to £5, the juries at the same time raised their verdicts to £4 19s.' *Report from the Select Committee on Capital Punishment* (London, 1931), p. viii.

[12] Radzinowicz, *op. cit.*, pp. 727 *et seq.*

[13] Quoted in *Report from the Select Committee on Capital Punishment,* p. xi.

[14] Quoted by Koestler, *op. cit.*, p. 32.

[15] *Report from the Select Committee on Capital Punishment,* p. xiii.

[16] This was done in the criminal law Consolidation Act of 1861.

[17] Quoted in the *Report of the Royal Commission on Capital Punishment,* Cmd. 8932 (London, 1953), p. 169.

[18] Put into effect in 1868.

[19] See *Report of the Royal Commission on Capital Punishment* (1953), pp. 168-170 and 467-473, and Viscount Templewood, *op. cit.*, pp. 33-35.

[20] *Report from the Select Committee on Capital Punishment,* H.M.S.O., 1931.

[21] Templewood, *op. cit.*, p. 10.

[22] 341 *H. C. Debs.* 954 (November 16, 1938).

[23] This section owes much to the discussion found in the *Report of the Royal Commission on Capital Punishment* (1953), especially pp. 5-15.

[24] Involving persons under 18 at the time of the offence and pregnant women.

[25] As noted earlier, there were in 1945 three other capital offences; treason, piracy, and arson in dockyards and arsenals.

[26] Royal Commission *Report,* p. 6.

[27] *Ibid.,* p. 7.

[28] *Ibid.,* pp. 9-10.

[29] Quoted in *ibid.,* p. 79.

[30] *Ibid.,* p. 25.

[31] Or the Secretary of State for Scotland, if conviction is under Scottish Law.

[32] Quoted in Royal Commission *Report,* p. 12.

[33] Although there has been some variation from decade to decade, the proportion has tended to remain constant over the period. A detailed table is given on page 13 of the Royal Commission *Report.*

[34] A more elaborate discussion of the origin and development of these reform groups is given in Gordon Rose, *The Struggle for Penal Reform: The Howard League and its Predecessors* (London, 1961).

[35] Memorandum quoted in *Report from the Select Committee on Capital Punishment* (1931), p. 437.

[36] A scanning of its officers during the period 1945-57, for example, reveals a fairly conscientious effort to include representation of all major political orientations, from its President, Lord Templewood, a minister in several past Conservative governments, to its Chairman, Sir George Benson, a Labour M.P., to one-time Vice-Presidents Harold Laski, Viscount Astor, and Paul Cadbury.

[37] J. D. Stewart, *British Pressure Groups: Their Role in Relation to the House of Commons* (Oxford, 1958), p. 71.

[38] Conversation with Hugh J. Klare, October 4, 1957.

[39] Membership in the group fluctuates greatly. At the time of the passage of the Criminal Justice Act of 1948 it had 108 M.P.s, but two years later, when no important penal legislation was pending, it declined to 55. *Howard League Annual Report for* 1949-50, p. 7.

[40] The Howard League, the Society of Friends Penal Reform Committee, the Women's Freedom League, The Theosophical Order of Service, the National Secular Society, the Committee on the Abolition of the Death Penalty, and the Hull Society for Abolition of the Death Penalty.

[41] Calvert was persuaded to become full-time secretary only after he was promised an annual subsidy of £250 by the famous Quaker chocolate manufacturing family, the Cadburys.

[42] National Campaign for the Abolition of the Death Penalty, 'Executions'.

[43] *Annual Report of the National Council for the Abolition of the Death Penalty for* 1945, p. 1.

CHAPTER 2

THE LABOUR GOVERNMENT AND ABOLITION

GREAT EXPECTATIONS

AFTER a decade of practically no political activity, the abolitionist movement came to life again with the election of the 1945 Parliament. Hopes ran high that the advent of the first truly Labour Government would be followed quickly by the introduction of Government-sponsored legislation to put an end to the death sentence for murder.

Abolitionists pinned their hopes on two things. First, everyone expected that a Criminal Justice Bill would be presented to Parliament by the Home Secretary before the session advanced too far. The need for sweeping changes in the criminal law and in the treatment of offenders was by now accepted by every political party. Sir Samuel Hoare's reform Bill of 1938 had been acclaimed on all sides and had been lost only because of the coming of the war; thus it was assumed that whichever party was victorious in 1945 would hasten to resurrect the Hoare bill and move it rapidly through the postwar Parliament. Abolitionists were fairly confident that a clause eliminating the death penalty would be included in the new version. Secondly, they had some cause to believe that even though abolition was not in the current Labour Party manifesto, a Labour Government would be much more favourably disposed to abolition than had been its predecessors. After all, had not Labour appointed the 1929 Select Committee and provided the majority that recommended an experimental suspension of capital punishment? Had not the Party's annual conference in 1934 passed an abolition motion, and the bulk of Labour M.P.s, including a future Home Secretary and nine other future Ministers, supported a private member's motion in 1938 urging the Government to add an abolition clause to the Criminal Justice Bill of that year? The portents seemed highly favourable, and the impression prevailed in abolitionist circles that success was finally within sight.[1]

No one, including the Home Secretary, Mr J. Chuter Ede, knew exactly when the Criminal Justice Bill would be presented to Parliament, and the abolitionists were given no indication of whether it would include an abolition clause. The Labour Government had a

large programme of social, economic and political reform to push through, and the Parliamentary queue for bills was a long one. The abolitionists, therefore, had two special tasks: to see to it that the Criminal Justice Bill contained an abolition clause, and to make sure that the bill was introduced early enough in the Parliamentary term so that a House of Lords veto could be overridden by the large Labour majority in the House of Commons. Their tactics were strongly guided by an awareness of these special needs.

In 1946, for example, the NCADP wrote to the Home Secretary stating the philosophy its members hoped the Criminal Justice Bill would embody and reminding him of the unanimous vote of the 1934 Labour Party conference in favour of abolition.[2] The National Council began a fairly intensive campaign to put the issue more squarely to the public by holding meetings, contacting the press, and arranging for letters to be written to London and provincial newspapers. By the end of the year a full-scale debate over the death penalty was being waged in the columns of the more influential journals of opinion. In the twelve months preceding the introduction of the Criminal Justice Bill, for example, the *Times* printed over forty letters on the subject, many of them from members or officers of the Howard League and the National Council.[3] The newspapers that published background stories on the forthcoming Criminal Justice Bill often drew upon Howard League and National Council facts concerning the results of abolition in foreign countries, as did church groups and debating societies. Increasing public awareness of the controversy was evidenced by the sale to the general public in 1946 of over 1,600 copies of Mrs Theodora Calvert's abolitionist tract, *Society Takes Revenge*.[4] Finally, the leaders of abolitionist groups, well aware of the smallness of their operating base, embarked on a strategy of enlarging their effective public by approaching other reform-minded groups (such as the Haldane Society and the Society of Friends) in the hope that these organizations would actively press for the inclusion of an anti-hanging clause in the anticipated legislation.[5] Howard League speakers carried the abolitionist case to 190 outside groups during 1946-47.[6]

Important as the creation of a generally favourable climate of opinion may have been to the abolitionist groups, it was only part of what had to be done. Crucial to the fate of these hopes was the action that would be taken by the Home Secretary, for it was clearly in his power to abet or destroy the chances of abolition in the House of Commons. Mr Ede was something of an unknown quantity on this question. He had voted for the 1938 motion seeking a five-year suspension of the death penalty, but he had never been a prominent or particularly vocal abolitionist; and it was feared that postwar crime conditions, Home Office pressure, or intra-Cabinet

disagreement might lead him to omit all proposals on capital punishment from his Criminal Justice Bill. To test Ede's views and to make him aware of the strength and intensity of abolitionist sentiment, two steps were taken toward the end of the 1946-7 session of Parliament.

The Parliamentary Penal Reform Group (which, it will be recalled, was the cluster of sympathetic M.P.s organized by the Howard League in 1945) decided to send a memorial to the Home Secretary asking him to include in the Criminal Justice Bill a provision to suspend the death penalty for a five-year experimental period, the recommendation of the Labour-appointed 1930 Select Committee. All M.P.s except ministers were canvassed by mail, and by July 1947 a total of 187 had agreed to sign the memorial. The party distribution of this group is revealing: 171 Labour, 6 Conservative, 2 Liberal National, 3 Liberal, 1 Communist, and 4 Independents.[7] The result of the poll was communicated to Ede as an indication of the wide support for the views of the Penal Reform Group. This canvass also served to reveal to the abolitionist groups who their most active Parliamentary sympathizers were likely to be.

In the same month the Home Secretary agreed to meet a deputation from the Howard League and the National Council. The deputation's approach was to fit its plea for abolition into the general philosophy that it knew the Criminal Justice Bill would embody. The absence of an abolition provision, its members argued, would show that the Government lacked real faith in the value of modern penal methods and would weaken the spirit that underlay the other clauses of the bill. They went on to elaborate on the standard arguments for abolition and stressed the previous position taken by the Labour Movement on the issue, including Ede's own vote in 1938. The deputation got the impression that Ede had no decided views on the subject and that he was in some doubt as to whether there would be a bill at all in the next Parliamentary session. Its members agreed that the National Council's immediate task should be largely that of trying to influence opinion in Parliament in the hope that this would be reflected in the Home Secretary's impending decision.[8]

Nor was the chief opposition party completely neglected. The historical attitude of the Conservative Party on this issue hardly gave great hope to the abolitionists, but they were aware that a small minority of Conservatives held abolitionist views. The inclusion of only six Conservative names in the Parliamentary Penal Reform Group's memorial was not encouraging, however, and the hostile attitude of the leadership of the party became apparent when Churchill refused to receive a small deputation to be composed of

National Council officers and several prominent Conservatives.[9] Nevertheless, the small band of Tory abolitionists in the House of Commons were urged to work on their more pliable and uncommitted colleagues in anticipation of possible divisions in the ranks of Labour. In putting its case to the Tory side, the National Council took special pains to emphasize its non-political character and the tradition that questions concerning the criminal law ordinarily stand apart from the party struggle. The Conservative response to these blandishments was hardly favourable, and the organized abolitionists took comfort only from the declaration by Lord Templewood (who as Sir Samuel Hoare had introduced the Criminal Justice Bill in 1938) that he had become a whole-hearted abolitionist and would work actively for an abolition bill in the House of Lords.

As the events of 1947 unfolded, it became apparent that the government had decided to give time to a Criminal Justice Bill during the 1947-8 Parliamentary session. Abolitionists remained fearful that Ede might take the line of least resistance and leave out altogether something as controversial as the capital punishment question. During the summer of 1947 the officers of the National Council agreed that if this should be the case abolitionists in the House of Commons would try to amend the bill in committee or, failing that, extract from the Government a promise of a separate abolition bill and press for the suspension of executions until time could be found to change the law. Had this latter course been adopted and proved successful, the Parliamentary crisis of 1948 over capital punishment proposals would never have occurred.

THE CRIMINAL JUSTICE BILL AND THE HOUSE OF COMMONS

Speculation ceased early in November, 1947, when the Government published its proposed Criminal Justice Bill. The omnibus measure contained dozens of clauses relating to the treatment of young offenders and persistent offenders, probation, the penal system and the criminal law; but, like its predecessor in 1938, it was completely silent on the subject of capital punishment. The abolitionists had failed to move Ede. They would have to fight their battle without official Government support, and hence with much less certainty of success in either Commons or Lords. The bill that was introduced followed very closely the Hoare bill of nearly twenty years before, and except for the inclusion of a clause abolishing corporal punishment, it eschewed controversy and was tailored to achieve agreement among all parties. It was a stunning defeat for the abolitionists, made all the more bitter because it came from a decision of a

minister who had once voted for the suspension of the death penalty and who spoke for the leadership of a party once pledged to enact the abolitionist recommendations of the 1930 Select Committee.[10]

Why had the Home Secretary and the Cabinet omitted an abolitionist clause? On this question a wide range of speculation exists. Until Cabinet minutes are made available and memoirs are written, it is impossible to fathom the true cause with certainty. For example, by examining the record and interviewing several dozen of the protagonists, the writer encountered no less than five different views, all of which conceivably explain why Ede decided to omit legislation dealing with the death penalty.

The first is the 'official' explanation given to the House of Commons by Ede himself during the second reading of the Criminal Justice Bill and on all subsequent occasions. In these speeches he insisted that he could not bring himself to apply his former abolitionist sentiments because he had become convinced from his study of Home Office evidence that capital punishment actually did deter people from murdering each other. In addition, he was impressed by the argument that the rising rate of all crimes during and after the war made it impossible to experiment with suspending the death penalty 'at this time'. Public opinion as he saw it was clearly on his side, and he was unwilling to risk the lives of fellow Britons by embarking upon what he considered to be a dangerous course without popular support.

A second explanation can be pieced together from the debates. It is simply that Ede and the Government were eager to see the much-postponed Criminal Justice Bill pass smoothly through Parliament and on to the statute books. For this reason the bill was framed to get the support of all political parties. Any clause that might stir passionate controversy was thus viewed with disfavour because it might delay the Government's overall time-table and possibly even jeopardize those clauses in the bill upon which there was agreement. It must be recalled that until 1949 the provisions of the 1911 Parliament Act were still in effect, which meant that the Lords were in a position to delay the bill's passage for two years—during which time the next general election would have to take place. There was genuine doubt as to whether the Lords, who hitherto had not voted against the Labour Government's social and economic reforms, were prepared temperamentally to swallow even so mild a reform as the abolition of whipping. Why jeopardize the chances of the whole bill by including the knottier problem of capital punishment? This view might have been more convincing had the Government assured the abolitionists that they would bring in a separate bill following the passage of the Criminal Justice Bill. Still other observers saw in the nearly unanimous support given to

the Criminal Justice Bill a chance for the lowering of partisan temperatures—a 'breather' which the 1945 Parliament needed and relished after two years of almost undiminished controversy.

These explanations are too exalted and too rational for a third group of persons. They pictured Ede, like Templewood before him and Major Lloyd-George after him, as the captive of the thinking of senior Home Office officials. Ede and the others simply were not strong or experienced enough to stand up to the 'departmental view', which was assumed to be strongly inclined to keep the death penalty for murder. This 'devil theory' of Ede's decision attributed his *volte-face* (and, later, Major Lloyd-George's) to the influence of Sir Frank Newsam, who was Ede's confidant on penal questions and in late 1948 became Permanent Secretary to the Home Office. Newsam, more so than his predecessor, Sir Alexander Maxwell, was cast in the role of Rasputin by the abolitionists.[11] This interpretation gains some credence when it is noted that within two years of leaving the Home Office Ede became once again an abolitionist.

There is a variation on this bureaucratic theme that might constitute a fourth kind of explanation. It holds that the 'departmental view' originates not so much in the predilections of the senior officials as in the views of the people who actually carry out penal and crime policies, specifically the prison officers and the police. Especially through the mouthpieces of their various associations, these groups—the backbone of the Home Office—have consistently voiced their opposition to any changes in the existing treatment of murderers. In those times (such as 1947) when the police and penal forces were undermanned and in desperate need of recruits, all threats or prophesies of doom that they conveyed to the Home Office probably were taken to heart. 'Constituent pressures', it was argued, forced both Ede and his senior officials to trim any abolitionist sails they might have considered raising.

Perhaps the most unsupported (but not necessarily the most flimsy) reason that has been offered as an explanation of Ede's decision was that the Cabinet judged the issue to be too 'hot' politically. Although Labour had an overwhelming majority in the House of Commons, several by-elections, it was claimed, had put the party's popularity in doubt and had convinced the more election-conscious ministers that nothing should be done that was clearly unpopular in the country, particularly on such an emotional and 'marginal' question as capital punishment. This view is generally attributed to the party's chief political strategist, Herbert Morrison, who as the son of a London policeman was scarcely a born-and-bred abolitionist. There were known abolitionists in the Cabinet, but (so it was argued) they were unable to prevail against the Home Secre-

tary's opposition and the pleas of those who feared adverse political consequences.

The Home Secretary's decision not to include an abolition clause might have been a more comfortable one had it not become apparent to him that a large number of his Labour colleagues in the Commons were bound to be antagonized by it. Reports reached him of Parliamentary groups meeting to plan counter-strategy, of motions and amendments set down to undo his decision, and of critical newspaper responses to his omission (including ones by *The Times* and *Manchester Guardian*).[12] Clearly the Front Bench had a backbench problem on its hands. Several options were open to it. It might fight all abolitionist amendments by imposing whips and forcing its supporters to choose between party loyalty and a defeat for the Government. It might promise to bring in a separate bill, thereby dissociating the issue from the Criminal Justice Bill. Or it might allow a free vote, waive the question of confidence, and throw the decision on the consciences of M.P.s. Each course was bound to carry a different set of consequences.

Possibly because it miscalculated abolitionist strength on its own benches, conceivably because it viewed the alternatives as less palatable, or perhaps because it simply failed to think through the consequences of a defeat, the Government chose the path of the free vote. In his opening remarks during the Second Reading debate on the bill, Home Secretary Ede announced that since the Government considered the capital punishment question to be a matter of private conscience and not a partisan concern, it would admit no amendments on the subject until the Report Stage (when the whole House would be involved), but would allow a free vote at that time.[13] The free vote, though not a common feature of British parliamentary life, is permitted occasionally, especially when the subject under consideration is judged to be an issue of public morality that cuts across party lines, or has not been embodied in party programmes, or arises in Private Members' rather than public bills. In such cases party discipline is not enforced and any divisions that occur are not taken as votes of confidence in the Government. In the past almost all bills concerned with the question of capital punishment had been put to free votes on some or all of their stages.

Under this arrangement the Second Reading debate (November 27-8, 1947) went forward placidly and successfully. With the crucial vote now postponed for several months, each side to the capital punishment controversy contented itself with a rehearsal of arguments that were to recur in more elaborate and heated form at the Report Stage. This preliminary skirmish was important nevertheless, for it alerted the public to the imminent prospect of a change in the

law of murder and gave a preview of the types of argument that each side would probably muster at the showdown.[14]

The Committee Stage of the Criminal Justice Bill extended over more than four months, thus giving abolitionists and retentionists alike time to seek support inside and outside Parliament. At a strategy meeting in the House of Commons early in December, twenty-two abolitionists from the major parties (with Labour providing most of the members) arrived at three important decisions: to press for a five-year suspension of the death penalty rather than its complete abolition; to confine the change to the crime of murder rather than all existing capital offences; and to advocate as an alternative to hanging nothing different from the usual sentence of life imprisonment.[15] Presiding over this small band was Sydney Silverman, a prominent left-wing Labour Member. Silverman was already the acknowledged leader of the House of Commons abolitionists, and he was to remain so throughout the decade of controversy that followed. He could hardly be termed a typical leader of the Commons, a man who easily grasps the mood of the chamber, knows how far he can go in making a case, and maintains generally cordial relationships with colleagues and political opponents alike off the floor of the House. He already had some reputation as an aggressive, highly vocal, blunt-spoken member of his party's radical wing. His skill in attacking the Tories was matched by his willingness to criticize the leadership of his own party, and he often did both in a manner scarcely calculated to enhance his personal popularity in the House. Yet in this particular case Silverman clearly emerged as the chief spokesman and strategist of a cross bench group of reformers. Why he was able to assume this leadership is not easily apparent. The special quality of his leadership will be examined at a later point, but here it should be noted that at this stage two factors were in his favour. First, as a solicitor he had gained a reputation for special interest in and knowledge of questions of criminal law and penal practices; and second, in accordance with the custom of the House, Silverman as organizer and mover of the original amendment had acquired the right to carry it through to a final decision.[16] As events progressed, Silverman's leadership was to be reinforced by his actions, rather than weakened by them.

Meanwhile certain extra-Parliamentary organizations were busily preparing for the day of the vote. The occasion brought forth no large or dramatic gestures. Abolitionist organizations continued to bid for public support, but the more urgent need was to apply pressure on those M.P.s who had been released from the whip. In the early months of 1948 M.P.s were subjected to constituency pressures from both sides, and interested and affected groups

throughout Britain—including police and prison officers' associations—passed resolutions directed at Westminster. Many church groups, chiefly of Nonconformist persuasion, forwarded abolitionist resolutions to their M.P.s or their co-religionists in the House of Commons.[17] As for the organized abolitionists, the Howard League was deeply involved in other aspects of the Criminal Justice Bill and generally left the capital punishment question to the NCADP.[18] The National Council was active on several fronts. It organized a well-attended meeting at Friends House chaired by Viscount Templewood. In the time-honoured manner it urged its members to telegraph their Members on the eve of the Report Stage debate. It circulated to every M.P. a set of pamphlets designed to calm the fears that had been voiced in the Second Reading debate. It also arranged for like-minded groups to take a stand on the subject. For example, the National Council got the Haldane Society (an organization made up chiefly of Labour-oriented lawyers) to distribute to all M.P.s a booklet stating the case for abolition in terms of the concerns of the practising lawyer.

A special task undertaken by the National Council, both then and in the later stages of the Bill, was to provide information to dozens of sympathetic M.P.s who wished to buttress their speeches with authoritative data or prepare themselves for thrusts by the opposition.[19] Nor could an abolitionist group afford to overlook the unpredictability of the expected free vote when the standard whipping machinery of the political parties is not available. In order to maximize the abolitionist vote the National Council worked in close harmony with two Labour M.P.s (Bing and Daines) to establish informal whipping. Lists of known sympathizers, known foes, and uncommitted Members were compiled on the basis of signed petitions, M.P.s' replies to NCADP members, signatures to motions and amendments, and private intelligence. Postcards were sent to presumed abolitionists or 'good bets', requesting assurances that they would be on hand or be willing to pair in favour of the amendment.

The abolitionists needed all the organization they could muster for it was clear that the atmosphere outside Parliament was hostile to their views. Many fewer public opinion polls were conducted prior to the April 15th division on the Silverman amendment than afterwards, but in every case the retentionists numbered more than twice the abolitionists. For example, in a poll taken in November 1947, by the British Gallup poll, 65 per cent of the sample registered approval of capital punishment, compared to 25 per cent who favoured abolition and 10 per cent who 'didn't know'.[20] It made little difference if the respondents were men or women, young or old, from higher, lower, or middle economic strata. A poll taken

earlier the same year showed slight differences among those of differing partisan and religious affiliation, but in no case was there anything like an abolitionist majority.[21]

TABLE I

VIEWS ON CAPITAL PUNISHMENT BY POLITICAL PARTY PREFERENCE (in percentages)

Party	Favour Capital Punishment	Oppose Capital Punishment	Don't Know
Conservative	75	18	7
Labour	65	29	6
Liberal	58	34	8
Other	66	20	14
Non-voters	70	22	8

TABLE II

VIEW ON CAPITAL PUNISHMENT BY RELIGIOUS AFFILIATION (in percentages)

Denomination	Favour	Oppose	Don't Know
Church of England	74	19	7
Non-conformist	65	27	8
Roman Catholic	70	22	8
Scottish Churches	72	24	4
Others	58	31	11
None	55	40	5

In this and subsequent polls it is revealing that the percentage of 'don't know' replies is much smaller than is customary on public policy questions. Almost everyone seemed to hold an opinion on capital punishment, and even at the beginning of a decade of controversy there were few clearly uncommitted segments of the public to be wooed by either side.[22]

On the eve of the critical debate in Commons press commentary was divided and fairly restrained. Many newspapers, including the popular London dailies, did little more than give space to the presentation of both sides.[23] *The Times,* the *Manchester Guardian,* and the *Observer* pressed their advocacy of experimental abolition; the *Daily Telegraph* found such experimentation 'inopportune'; the mass circulation dailies split fairly evenly; and the provincial papers were the most vocal and Cassandra-like in their opposition to any change in the law of murder. 'This is no time for experiments in idealism to please cranky theorists', declared the *Hull Daily Mail,* or, in the words of the *Scotsman,* 'to increase the probability of murder being committed'. The *Gloucester Echo* echoed the fear of cranks and warned against the danger of confusing every change in the law with true reform. The *Dundee Courier and Advocate* entitled its first leader 'The Gunmen's Charter', while a cartoon in the Cardiff *Western Mail* pictures a stereotyped gangster looking at a sign reading 'Capital punishment may be abolished' and thinking to himself

Gee! If Those Dopes Abolish
The Rope I'd be Able to Shoot
My Way Out of a Jam—
and Live!

The reporting of crime is a major preoccupation of almost all newspapers, and the British popular press is no different in this respect. It is difficult to determine whether or not a newspaper has deliberately played up an especially ghastly or heinous crime in order to press a viewpoint on its readers. There is little evidence that the newspapers opposed to abolition made greater capital than usual out of the murders that occurred in the autumn of 1947 and the spring of 1948. In this matter much depends on sheer accident, that is, on the kind of murders that are committed during the period in which capital punishment is under review. The press can select, neglect, highlight, embellish, and play upon certain emotions; but it cannot very well control the type of murders that occur. It happened that just when the Houses of Parliament were taking up the death penalty question a series of rather unusual and shocking crimes occurred in Britain.

In one case, repeatedly brought up by opponents of abolition in both Houses, a ship's steward assaulted and murdered a young actress and pushed her body through a porthole into shark-infested waters. The retentionists spared the public no details. Just a month before the vote in the Commons, a police constable was murdered by a youth in London, and in the week following the front pages of the *Evening Standard,* the *Evening News,* the *Daily Graphic,* and the *Sunday Pictorial* featured little else. Not to be outdone on such a theme, abolitionist newspapers like the *Daily Mirror* and the *Star* offered pictures of the policeman's children and his comrades bearing wreaths at the funeral. 'Kill the Killer', thundered the *Daily Express,* while the *News of the World* and the *Sunday Dispatch* saw in the murder new evidence of an unparalleled wave of gangsterism sweeping the island. There can be little doubt that the occurrence of these and similar murders, coming when they did, reinforced retentionist feeling in Britain.

But Parliament is not the general public, and the decision belonged to it. Debate on the Report Stage of the Criminal Justice Bill was to begin on April 15th, and the Silverman amendment, now bearing the signatures of 147 M.P.s, was the first order of business. At a meeting of the Parliamentary Labour Party on the morning of the 15th, Labour Members were informed by Leader of the House Herbert Morrison and Chief Whip William Whiteley that the Cabinet had decided to limit the free vote to backbenchers.[24] In accordance with the principle of collective responsibility,

ministers and junior ministers would not be free to vote for the Silverman amendment. If their consciences led them to support abolition, they could at most abstain at the division. The announcement came as a blow to the Silverman group, which had been relying upon the votes of known sympathizers in the ministry. They felt now that the Home Secretary had deliberately misled many members of the Government and themselves, and they vented their rage on Morrison, whom they viewed as the mastermind of the Labour retentionists.[25] For their part, the Government supporters of capital punishment considered the abolitionists' demands clearly excessive and subversive of collective responsibility. The meeting thus adjourned in an atmosphere of mutual frustration and rising temperatures.

That afternoon both the floor and the galleries of the House of Commons were packed for the much-heralded debate on capital punishment. Opening the debate was the abolition clause's sponsor, Sydney Silverman.[26] In his view, the issue was one to be resolved by the conscience of each M.P. Party lines meant nothing in this case; nor should the views of any group—be they judges or the Cabinet—be accepted without question. However, Silverman reminded Labour Members of their special obligation to support the clause because it was their party's conference which in 1934 went on record in favour of abolition. He proceeded to call forth the standard arguments: that the death penalty denies the sanctity of human life, makes impossible the rectification of error, flies in the face of the experience with deterrence of countries that have abolished the penalty, leads to the glamorizing of crime, and fails to take into account striking differences in the motivations and circumstances of murder. Anticipating the arguments of his opponents, Silverman admitted that public opinion as crudely measured supported the retention of the rope. But this opinion, he argued, has not been exposed to the facts or to discussion. The House of Commons, on the other hand, is the only place where an informed cross-section can be brought together, and its members are not delegates of general opinion but thinking men who alone are prepared to judge the consequences of policy. Nor could he accept the view that the time was not ripe for changing the law. If capital punishment deters murder, it ought to remain; if it does not, it should go. The Government cannot logically bring in legislation to abolish corporal punishment in a period of rising crime and still oppose eliminating the death penalty for murder, a crime known to be little affected by general crime waves. Silverman ended with a plea that in an age of declining values Britain should act so as to increase society's respect for human life, rather than debase it by clinging to this vestige of a less civilized epoch.

To second the motion the abolitionists chose a Conservative, the publisher Christopher Hollis. His special concern was to disabuse the House of the notion that common sense shows that people will be deterred from murder by the death penalty. Paraphrasing Dostoevsky and Jung, he argued that the very existence of this penalty serves as a stimulus to murder for certain psychopathic criminals, those who crave the publicity and notoriety that can only be achieved by murdering others. Like Silverman, Hollis pointed out that the foreign countries that have abolished capital punishment usually have experienced a reduction rather than an increase in the murder rate. Britain, a compassionate society, must act now to remove this blot on its humanity.

The first speaker to defend the existing law was Sir John Anderson (later Viscount Waverley) who for ten years had served as Permanent Secretary to the Home Office and later as Home Secretary. He was quick to call attention to the fact that on this issue there was great inequality of organized group support. No voluntary associations existed to champion the retention of capital punishment. By inference he warned his fellow M.P.s against the onesidedness of the literature and the pleas they had received. His case against abolition took four forms. First, while deploring such motives for punishment as atonement and retribution, and while agreeing that it is doubtful that hanging serves as much of a deterrent in cases of 'constructive malice' or in *crimes passionels,* Anderson nevertheless insisted that there is 'a fair measure of agreement about the deterrent effect of capital punishment'. Second, he warned against attaching too much importance to the experience of other countries, '. . . with a tradition different from our own, with a population differing from ours, less homogeneous or more heterogeneous, predominantly rural countries, without the special problems which large cities with considerable slum areas present'. Third, he declared that the possibility of error in the present machinery of justice was practically non-existent—'so small, indeed, so infinitesimal that consideration can be dismissed'. In reply to two Labour Members who brought up specific names, he ventured the view that no innocent man had been hanged this century. Finally, he asked the abolitionists what alternative punishment they would substitute for capital punishment. The only possible alternatives would be release after a short term, intolerable to the public, and captivity for life, intolerable to the prisoner and the prison officers. Until some solution to this dilemma was reached, Anderson concluded, the death penalty must remain.

The speeches summarized above brought out the chief arguments that were relied upon by the two sides, although it took a total of twenty-three speeches—thirteen by abolitionists, ten by opponents

of the Silverman clause—to round out the proceedings. A few excerpts from other speeches will suffice to indicate the range of viewpoints and give the flavour of the debate.

John Paton (Labour, the former secretary of the NCADP) challenged Anderson's denigration of the experience of foreign countries by citing as comparable examples Belgium and the state of Michigan. He concluded on an emotional note: 'I am a red-hot partisan, and I make no pretence at all of any soaring to the heights of ideal impartiality. I believe capital punishment is a foul thing . . . an unmitigated evil, a centre of pollution sending out constant-spreading ripples throughout our whole community'.

Quintin Hogg (Conservative, later Viscount Hailsham) saw cogent arguments on both sides but came down against the amendment. To abolish the death penalty after it had acquiesced in the Nuremberg executions would dishonour the House of Commons. He agreed that the irrevocability of the penalty requires that all precautions be taken in the administration of justice but felt that this is not sufficient reason for removing a defence of society. On the abolitionists' use of statistics, Hogg felt that these figures 'only fuddle us when we are applying our minds to a question of this kind'.

Terence Donovan (Labour, later Justice Donovan) accused the Home Secretary of knuckling under strong pressure from officials in the Home Office and from the police. He added that he had listened in vain to detect in Anderson's speech 'that differentiating factor in other countries which would make even the trial of this experiment unsafe in this country'. He admonished the House not to fall under the sway of emotion, most of which favoured the retention of the *status quo*.

John Maude, K.C. (Conservative) put the burden of proof on the abolitionists and demanded that they satisfy the House 'beyond all reasonable doubt' that the situation would not deteriorate as a result of changing the law. He quoted the distinguished Prison Commissioner, Sir Alexander Paterson, on the inhumane effects of prolonged imprisonment and emphasized the deterrent nature of capital punishment, insisting that 'what are vulgarly called "the rope" and the "long drop" . . . are feared by criminals, terribly feared'.

Leslie Hale (Labour) chose to emphasize the evil effects of the penalty on the general population and on prison officers and their charges. The retentionists cannot have it both ways. They cannot ask the House to disregard statistical evidence and still insist that it must yield to the blandishments of the Home Secretary, who bases his arguments for no change on crime figures of the last year or two.

Stanley Evans (Labour): 'Public opinion is healthy and vigorous

and free from neurosis. It accepts the Biblical injunction, and I share that sentiment—"eye for eye, tooth for tooth".'

Beverley Baxter (Conservative) argued that on a great moral issue it is impossible and contemptible for M.P.s to run to their constituents and conduct a Gallup poll, 'being bound by the majority one way or the other when we ourselves disagreed with it'.

Sir David Maxwell Fyfe (Conservative, a future Home Secretary and Lord Chancellor) maintained that the right to take life judicially in appropriate cases is necessary to the self-defence of the community and thus is morally justifiable. His experience as a barrister, which brought him into contact with the criminal population of Lancashire, led him to believe that the fear of being hanged is a sizeable deterrent to violence.

J. Chuter Ede, the Home Secretary, was the final speaker against the Silverman amendment. He implored the House to reject any change in the law of murder at this time and repeated his previous warning about the increasing incidence of violent crime, the rise of the armed gangster, and new dangers to the police. He drew upon the latest crime statistics, as well as upon his informal soundings among 'workingclass people', whom he found to be convinced that the time was not ripe for reform. While subscribing to Burke's view that M.P.s were not mere delegates of constituency opinion, he insisted that 'one of our duties is to ensure in matters like this that we keep respect for the law alive in the hearts of the people who have to submit to its administration'. He, too, concluded by quoting Sir Alexander Paterson to the effect that, because of the conditions of prison life, there is no humane alternative to the death penalty that also satisfies the public demand for lengthy incarceration of murderers.

The final speaker for the amendment, Reginald Paget (Labour), dropped something of a bombshell. Time and again the House had been urged to accept the defence of the death penalty made by the respected Prison Commissioner, Paterson, that hanging is actually more merciful than life imprisonment. But according to Paget what had been quoted were Paterson's views in 1930, whereas 'The House may be interested to hear that before Sir Alexander Paterson's death, he joined the Society for the Abolition of Capital Punishment and became a subscriber to that society, precisely because he saw that the alternative was now available'. It was revealed later that this was quite untrue. In retrospect it seems that Paget either had been carried away by his oratory and imagined this fact, or he had misread a note on the subject that had been slipped to him during the debate by the secretary of the NCADP, who was in the gallery reserved for interested parties.[27] Paget later apologized to the House, but only after being subjected to the derisive scorn of the reten-

tionists and having caused embarrassment to the National Council, whose prestige depended greatly upon its reputation for scrupulousness. As far as the division was concerned, however, the impact of Paget's revelation was probably less pronounced than his critics claimed, for it is doubtful that at this eleventh hour there were many undecided M.P.s to be swayed by this piece of information.[28]

The debate was a notable one for several reasons. In the first place, the speakers themselves made up two crossbench coalitions, there being abolitionist speeches from eight Labour Members, three Conservatives, and two Independents, while seven Conservatives and three Labourites supported the Government's position. Second, dissension within the Government itself was apparent from the fact that despite the nature of the issue none of the four law officers had taken part in the debate. Finally, this was clearly a backbencher's day, almost totally free from the usual Front Bench monopolizing of time, and the sense of release was particularly delicious to those Labour Members who had not known such an occasion since their entry into Parliament in 1945.

Late in the evening of April 14th the House divided on the Silverman clause. Several minutes later the Clerk handed the results—to the abolitionist tellers! The clause had won, 245 votes to 222. The moment was described from the gallery in this way:[29]

> Excitement had been steadily rising in the crowded chamber during the closing stages of the debate . . . but jubilation found vent in a roar of cheering when it was evident how the vote had gone . . . Excited members stood in their places and waved their Order Papers, while others shook hands with their nearest neighbours. It was some minutes before the hubbub died down.

The *New Statesman's* Parliamentary correspondent offered a special interpretation of the excitement:[30]

> For once the machine had been defeated by conscience; and a long-standing Party pledge had been fulfilled despite the dictates of expediency . . . The violence of the jubilation revealed a frustration of a Party which longs to be able to choose between right and wrong and is constrained time after time to make do with the lesser evil.

Table III indicates the distribution of the vote by political party (including tellers).

The division list reveals that among the 289 Labour Members who took part in the division, the margin favouring the Silverman clause was three to one. In contrast, the Conservatives and their

allies voted ten to one against it. Thus party lines were rather firmly drawn on the issue, despite the Government's official position. By all odds the most remarkable thing about the vote was the number of Ministers who, following the Government's edict on collective responsibility, availed themselves of the right to abstain. Most of

TABLE III

ANALYSIS OF HOUSE OF COMMONS VOTE ON SILVERMAN CLAUSE[31]

Party	For Clause	Against Clause
Labour	215	74
Conservative	14	134
Liberal National	2	6
Liberal	7	0
Independent	5	3
Communist	2	0
National	0	1
Irish Nationalist	1	0
Independent Labour	1	0
Ulster Unionist	0	6
	247	224

them must be put down as abolitionists. Of the 72 members of the Government in the Commons, 44 abstained, several of them conspicuously remaining on the Front Bench during the division. It was this group of ministerial abstentionists which gave the abolitionists their victory. Had they voted at all, they would have had to support the government's official policy. Out of 14 Cabinet Ministers with seats in the House 9 voted (among them Attlee, Morrison, Bevin and Ede), while other important personages (including Cripps, Bevan, and Wilson) were present but did not vote. Another 9 senior ministers not of Cabinet rank and 32 junior ministers abstained, as did all four of the law officers in the Commons. Notably absent from the division lobbies was Kenneth Younger, Undersecretary at the Home Office and Ede's principal colleague in steering the Criminal Justice Bill through the Commons.

It was an historic moment. For the first time in almost a century the House of Commons had approved a major change in the law of murder. The abolitionists had triumphed, at least momentarily.[32] The Home Secretary had previously agreed to abide by the result of a free vote, and now was faced with the task of having to facilitate the passage of a piece of legislation he had recommended against in strong words. The Silverman clause was to have further stages; but before taking them up, the reaction of the outer world to the events of April 14th deserves notice.

The response of the press followed familiar lines. The national

dailies that had urged the abolitionist position—such as *The Times, Manchester Guardian, News Chronicle* and *Daily Mirror*—hailed the decision as historic and praised the debate as an occasion upon which the House 'lived up to its finest tradition of vigorous and responsible argument'. Weekend reviews such as the *Economist, New Statesman* and the *Spectator* (edited by an abolitionist M.P.) echoed these sentiments. On the other hand, Lord Beaverbrook's *Daily Express* saw it as an 'emotional free vote', and the semi-official Conservative organ, the *Daily Telegraph,* declared that 'the narrow majority for this imprudent change . . . was obtained on representations now admitted to be unfounded'—a clear reference to Paget's ill-timed gaffe. Similar sentiments appeared in the *Daily Mail, Daily Graphic, Evening News* and *Evening Standard*—all national dailies. Among the Sunday newspapers only the influential *Observer* had good words for the action of the House. To the mass-circulation *News of the World* the issue was of such paramountcy that its editors suggested the government hold an unprecedented national referendum to sound out public opinion before the clause be given further Parliamentary stages. Most of the provincial newspapers, as was to be expected from their generally Conservative politics, found the vote deplorable. For every paper that affirmed the *Birmingham News's* judgment that 'we ought . . . to applaud this courageous gesture to humanity', two others printed variations on the theme of the *Northampton Chronicle* and *Echo*: 'The Killer's Charter was carried by the Commons in a moment of emotional irresponsibility and sickly sentimentality'.[33]

Organized groups were quick to record their reactions. The *Police Chronicle,* in its report of the debate, cited only the speeches of Ede and Anderson and warned that one of the consequences of this change would be the necessity of arming the British policeman, with 'repercussions of grave consequence to the internal safety of the state'.[34] At a special meeting, the London committee of the Police Federation of England passed a resolution condemning the vote to suspend the death penalty,[35] and many local Watch Committees forwarded similar views to the Home Secretary and to their M.P.s. The chairman of the Prison Officer's Association, in his address to the annual conference, termed the vote 'a profound and untimely mistake' and promised to press for special compensation for dependants of officers killed in prison 'as a result of the abolition of the death penalty'.[36] As expected, the religious organizations were divided in their reactions. Anglican comment was not plentiful, perhaps because many churchmen were awaiting the views of archbishops and bishops when the Bill went to the Lords. The *Catholic Herald* affirmed that on this issue Catholics were free to use their own intelligence and consult their consciences, although the journal

advocated the introduction of degrees of murder.[37] Mildly abolitionist sentiments were expressed in the *Methodist Recorder*,[38] while the *English Churchman* declared that for the 'Bible Christian', no view is adequate that ignores 'the great pre-Mosaic principle of Genesis ix. 6: "whoso sheddeth man's blood, by man shall his blood be shed" '.[39] In Scotland, a gathering of Highland ministers of the Free Church of Scotland condemned the House of Commons' actions as 'unscriptural', and another Scottish synod agreed to send letters of protest to Ede and all local M.P.s.[40]

None of the political parties' extra-Parliamentary organizations took official positions on the abolition vote at this time, although by chance the Conservative Women's Annual Conference met in Albert Hall several days after the Commons vote. In future years this gathering was to take an even keener interest in capital and corporal punishment than it did in 1948. But interest in the subject of punishment has always been great among women—particularly Conservative women—and at this meeting an audience of 7,000 heard their party leader castigate the government for putting itself into the embarrassing position of recommending a policy but agreeing in advance to accept defeat on it.

> What a confession of impotence it was [said Churchill] that the Prime Minister and the Cabinet, who did not dare to stand for their declared convictions of what they thought was right and necessary in the present circumstances, should have cast their duty to the wind and left this grave decision on capital punishment to the casual vote of the most unrepresentative and irresponsible House of Commons that ever sat at Westminster.[41]

Irresponsible or not, it was clear that the House of Commons had taken a decision that flew in the face of the popular sentiment of the day. However measured, public opinion and Parliamentary opinion were at odds on this issue. The results of three types of polls taken shortly after the April 14th vote bear this out.[42] The *Daily Express* poll (whose sampling techniques have never been revealed except to the extent that it is 'scientifically organized' and covers 'a representative cross-section of the community') asked: 'Do you approve or disapprove of the decision to abolish the death penalty?'[43] Its respondents replied as follows:

Approve	14%
Disapprove	77%
Undecided	9%

Broken down into party categories, the *Express* figures showed that

85 per cent of the Conservatives were for retaining capital punishment, as compared to 71 per cent of Labourites, 69 per cent of Liberals, and 76 per cent of those who expressed no political allegiance.

The British Institute of Public Opinion (the Gallup organization) framed its question more accurately, although it too allowed only the standard triad of responses: yes-no-don't know. The question and breakdown of responses appear below.

TABLE IV

GALLUP SURVEY OF VIEWS ON CAPITAL PUNISHMENT
MAY, 1948[44]

Q.: Parliament has decided to try the effect of not hanging anyone for murder for five years. Do you approve or disapprove of having this period?

	Approve	Disapprove	Don't Know
Total	26	66	8
Men	27	68	5
Women	25	63	12
Ages			
21—29	30	63	7
30—49	26	66	8
50—65	25	66	9
66—over	21	67	12
Economic class			
Higher	24	72	4
Middle	28	67	5
Lower	27	65	8
Very poor	22	62	16
Past voting			
Conservative	16	79	5
Labour	35	56	9
Liberal	26	64	10
Other	42	53	5
Didn't vote	26	61	13

The Gallup results are noteworthy on several counts. First, they make it plain that the death penalty question is one on which almost everyone has an opinion or feels secure enough to voice one. Compared to polls on just about any other subject, the number of 'don't knows' is remarkably low. Second, they show a clear majority in every categorical group for keeping capital punishment for murder; no significant group has more than 35 per cent of its members in accord with the House of Commons decision. Lastly, the usual differences of opinion between different sexes, ages, and economic groups fail to show up here. Politics differentiate to a degree,

although none of the Gallup figures put retentionist support so high in all parties as the *Daily Express* poll cited above.

The most revealing poll taken at this time was the survey made by Mass-Observation of a stratified sample of 6,114 Britons. This polling organization has long been noted for its emphasis on unstructured and openended interviewing, and on this issue it turned up some revealing differences from the responses to the other polling organizations, along with a welter of unsolicited comments. Its report appeared in the *Daily Telegraph* and was distributed to all members of Parliament shortly before the vote in the House of Lords.[45]

Mass-Observation found that 96 per cent of its sample had heard of the House of Commons decision to suspend capital punishment for five years. In this group feeling ran this way:

	Per cent
Approved of the experiment	13
Disapproved unreservedly	69
Said that degrees of murder should be recognized	7
Showed mixed feeling	4
Gave miscellaneous answers	2
Did not know whether they approved or not	5

It is revealing that when given the opportunity to choose other, middle-ground alternatives, 82 per cent of the sample still opted for the yes-no choices, and the degrees of murder idea was supported by only 7 per cent. Although Mass-Observation's 69 per cent disapproval figure is quite close to Gallup's 66 per cent, its approval figure of 13 per cent is only half of Gallup's. It might be suggested that those who answered the Gallup question and would have preferred a middle ground, or felt rather weakly on the subject, were apt to be pushed into approval of the experiment for lack of any respectable alternative.[46]

The Mass-Observation findings confirm the findings of other polls that few of the usual group differences were manifested on this issue. Sex, age, income, area, and size of town were not influential factors, and religious belief was only a slight one. Members of the Church of England and Church of Scotland were more inclined to favour retention than other churchgoers or non-churchgoers. Almost twice as many persons in higher educational groupings (i.e. those not leaving school under 17) approved the experiment as those who had had only an elementary education. The other major influence was political affiliation. Only 8 per cent of the Conservatives approved of the proposed measure, compared with 19 per cent of Labour supporters and 16 per cent of Liberals, a result hardly mirrored in the behaviour of the members of these parties in Parliament.

The Mass-Observation interviews not only measured these dispositions; they also permitted them to be elaborated and justified. Forty-seven per cent of those who approved the clause and 41 per cent of those who disapproved spontaneously gave reasons. Reasons for approval had this order of frequency:[47]

	Per cent of All Mentions
Experiment worth a trial	36
Humanitarian and ethical	29
Death penalty not a deterrent	8
Religious feelings	6
Death penalty has been successfully abolished in other countries	6
Dangers of judicial error	3
Frequency of extenuating circumstances	1
Miscellaneous reasons	11

On the other hand, reasons for disapproval were given in this order of frequency:[48]

	Per cent of All Mentions
Security, danger to individuals and community	40
Revenge, life for a life	26
Time not yet ripe for it	11
Special dangers to children	4
Menace from released prisoners	4
Special danger to police	2
Religious feeling	1
Miscellaneous reasons	12

The following table, which summarizes the findings of the three major polls, should serve as a conclusion to this brief excursion outside parliament into the reaction of the larger public to the House of Common's first vote on the Silverman amendment.

TABLE V

SUMMARY OF POLLING RESULTS

Response	*Daily Express* (Per cent)	BIPO (Per cent)	Mass-Observation† (Per cent)
Approve amendment	14	26	13
Disapprove amendment	77	66	69
Favour degrees of murder	*	*	7
Mixed feelings	*	*	4
Miscellaneous	*	*	2
Don't know	9	8	5

†Figures based only on those who had heard of experiment
*This category not included in result

Finally, mention should be made of a private poll of his constituents conducted by one of the fourteen Conservative M.P.s who

had voted for the Silverman clause at the Report Stage division. Between the Commons action and the debate in the Lords, Stanley Prescott sent 39,840 reply postcards to the electors of Darwen, asking them to state whether they approved his action. Two weeks later he reported that over a third of them had responded, with 718 approving the suspension of capital punishment and 13,736 opposed to it.[49] Presumably Prescott took this evidence of constituency opinion as authoritative and binding, for he never again sided with the abolitionists on a division. And needless to say, in the House of Lords and elsewhere the supporters of capital punishment gleefully flaunted the results of the Darwen poll.

THE LORDS AND AFTER

Having passed through all its stages in the Commons, the Criminal Justice Bill, now including the clause suspending capital punishment, went up to the Lords. It was known that with the possible exception of the abolition of flogging, all the principles of the original bill were likely to be accepted by the upper chamber. But on the death penalty question both the Government and the Lords had heavy decisions to weigh. The Government's dilemma was every bit as embarrassing as the Opposition leaders were wont to point out. It had permitted the free vote and pledged itself to accept the result. The result turned out to be against the considered judgment of the Cabinet, which now found itself forced to defend a policy repugnant to it in the House of Lords where its party was a minority element. Few persons doubted that the heavy Conservative majority in the Lords was dead against the new clause. Thus the clause was likely to be deleted, which would put the Commons and Lords in conflict. Such an action would at least give the Commons a chance to reconsider its first vote. But it would put the Home Secretary in the difficult role of asking the House to insist on a clause to which the Government was openly opposed; and if it continued to support the abolition clause and the Lords continued to stand firm in rejecting it, the Government risked losing the entire Criminal Justice Bill (or at least delaying it another two years at the earliest).

The Lords, too, faced decisions. They had to judge the merits of the amended bill. They also had to decide whether by deleting the controversial clause they might be acting contrary to the modern interpretation of the constitution, that is, whether it would be proper for a non-representative body to give full rein to their opinions to the extent of overthrowing a decision reached by the elected chamber of Parliament. The debate was bound to have special repercussions because it came at a time when an inter-party conference estab-

lished to work out a new role for the House of Lords had broken down in disagreement, and the question of the Lords' power had been thrown back into the arena of partisan decision. This was the prelude to the Parliament Act of 1949. Rejection by the Lords of the Silverman clause would clearly bring a 'peers versus Commons' conflict, but not necessarily a 'peers versus people' one, for as a British political scientist has pointed out,

> The case was not really parallel with the other occasions during the reign of the Labour Government when the Conservative majority in the Lords had thought it proper to vote against the Government's advice on specific points on the committee stage of Government bills. In those matters the Lords did no more than make an ineffectual protest in the expectation that their protest would be swept aside when the Bill returned to the Commons. On this question the majority in the Lords agreed with the Government . . . [and] in terms of the old language of conflict between the Houses there was clearly a chance that the Lords could really make their will prevail.[50]

In the light of the known state of public opinion, there was even a chance that the position of the Lords as a delaying body would be enhanced in the eyes of the nation at the very moment of its proposed reformation. The retentionist newspapers assured the Lords that they were the true spokesmen of the people on this issue, and even abolition papers such as *The Times* were unwilling to see the Lords renounce their independence for the sake of avoiding conflict with a majority of the Commons.[51]

Faced by this situation, the organized abolitionists could do little more than muster their few supporters and pray for a reversal of form. They could count on a handful of Labour and Liberal Lords, but among the Conservatives there were few besides Viscount Templewood who were avowed abolitionists. A few ecclesiastical peers were known to be opposed or lukewarm to the death penalty, but there was always doubt as to how many of them would turn up for the division. The presiding judges who made up the Law Lords were all known advocates of hanging. The NCADP could only trust that most of the backwoodsmen would pass up this occasion for an excursion to Westminster, thereby keeping the margin of defeat small and respectable. The National Council did what it could: urged the faithful to attend, provided sympathisers with a full brief of the case, arranged to have spokesmen meet some of the unanswered arguments raised in the House of Commons. Beyond this little was done except conjecture on the alternatives posed by the expected defeat of the clause.

The House of Lords debated the capital punishment issue for

four days.[52] Much of the ground covered in the Commons' discussion was retraced, but there were new ideas and differences of emphasis, due particularly to the greater concentration of judicial and ecclesiastical opinion in the upper chamber.

The second reading debate began ominously with a statement by the Lord Chancellor that was rich in paradox and embarrassment. In content it was a straight retentionist speech, full of faith in the deterrent quality of the death penalty, lightly regarding foreign experience, heavily accenting the current increase in crime in Britain. And yet in the end Viscount Jowitt moved the second reading of the Criminal Justice Bill, including the clause put in by the House of Commons. He was bound by the terms of the Government's promise, however personally repugnant to him its effect was. 'Since it has been decided, however, that it is the right thing to do, let us now go forward.'[53] In a most backhanded manner, the head of the judiciary thus advised the Lords not to interfere with the handiwork of the popular House.

The other peers present were under no such cross-pressures and spoke their minds more freely. There were 45 speeches on the inclusion of the suspensory clause: 16 in favour of it, 26 clearly opposed, and three which pressed strongly for degrees of murder as a halfway house. With the exception of the Lord Chancellor (whose ambivalence has been noted), the judicial bench was solidly opposed to the clause. They were well represented by the Lord Chief Justice, Lord Goddard, who in a maiden speech insisted that if the criminal law is to be respected, it must be in accord with the public opinion of the day, as the proposed reform most obviously was not. Drawing upon his own experience and cases recently before the courts, the Lord Chief Justice argued that 'there are many cases where the murderer must be destroyed' and not simply jailed for long periods. Lingering over grisly details, he led the Lords past a parade of horribles—cases of rapes of elderly women, persons assaulted and left to die on the pavement, a watchman battered to death in a cinema, the young actress murdered and pushed through a ship's porthole.[54] He added that he had ascertained the views of the twenty Judges of the King's Bench and found them unanimously in favour of retaining the death penalty.[55] Lord Goddard concluded his impassioned speech with a plea to the Lords to stand firm in rejecting a compromise bill if one was offered, on the ground that the existing review power of the Home Secretary was a more effective and flexible instrument than the law could ever be. On a more subdued level these views were echoed by three peers whose opinions carried great weight among Conservative and Liberal peers: The Marquis of Salisbury and Viscounts Simon and Samuel.

The case for abolition was put most fully by Viscount Temple-

wood, a Conservative, a former Home Secretary, and President of the Howard League for Penal Reform. Perhaps because he realised that the clause was already lost in the Lords, he prefaced his remarks by taxing the Government on its procedure. He had always favoured a separate bill rather than a clause attached to an omnibus penal reform measure. The Government by allowing the suspension clause to be introduced at the eleventh hour had stirred up the maximum of excitement and left both Houses in an atmosphere of doubt. Templewood went on to demand that the Government issue a White Paper on the position of capital punishment at home and abroad so that the House might be in possession of the facts at the committee stage. In his second speech he used the material that had been thrown together hastily in the White Paper[56] to meet two common arguments for retention: (1) that no satisfactory alternative punishment to hanging existed, and (2) that the time was not ripe for abolition. To the first argument he replied that there would be no injury to the present reformative prison system if really dangerous murderers were kept in prison for 20 or 25 years. As for the time not being ripe, he wondered if opponents of abolition would ever agree it was the right time. When the crime rate was high, they demand that the death penalty be kept; when it declines, they argue it is best to let sleeping dogs lie, for the deterrent is working. In Templewood's view, it is unjustifiable to abandon any criminal as beyond hope. His parting words were a warning against over-reliance on public opinion, which in the past has shown itself to be both ignorant of penal conditions and almost always against reform of any kind.

Time and again the Lords assessed the role of public opinion. Lord Simon, for example, defended the sampling techniques of Mass-Observation. Lord Samuel, Lord Llewellin, and the Archbishop of Canterbury had recourse to the latest Gallup figures to buttress their cases. Other Lords favouring retention invoked the emotions of the common man and took obvious delight in the apparent fact that on this issue the majority of the Lords were closer to the people than was the Commons. Denied such resources, the abolitionists were forced to snipe away at the polls and argue for Burke's concept of the true function of the representative in which the public's sentiments count for little compared to the judgment of the informed parliamentarian.[57]

Among the Lords Spiritual opinion was divided, ranging from the wholehearted support of the clause by the Bishop of Chichester to the 'eye for an eye' Christianity of the Bishop of Truro, who was for extending the death penalty to attempted murder and rape. In a rather typical performance the Archbishop of Canterbury took a middle view. He was impressed by the state of public opinion; he

passed off the statistics as unreliable guides; he thought the five-year experiment 'quite idle'. But he also believed that many people were profoundly uneasy about the death penalty and its present application. 'Christian belief is that human life is to be treated as a sacred thing, as a trust from God . . . It should be assisted by a modification of our present law. It would be weakened if now we merely went back to the *status quo*.'[58] He would welcome a separate bill that retained capital punishment, only for certain categories of murder, e.g. the killing of policemen, and what he termed 'murder most foul'.

Many peers gave the impression that they shared the Archbishop's vague feelings that some more formal concept of different categories of murder should be developed. Lord Samuel, for instance, put forth the view that the present method of reprieve, although necessarily flexible, might be modified so that each Government would announce that all murderers would be reprieved except those in four categories: political assassins, murderers of police or others apprehending armed criminals, murderers of prison officials, and those guilty of 'planned and callous murder'.[59] Several other peers avowed that they could not vote for the clause as it presently stood but might look favourably upon some scheme of grading murders. Later the Government, in perhaps an overly sanguine mood, took these words to represent common ground on which the House of Lords might care to stand.

Over 200 peers were in the chamber when the division came at 7.45 p.m. on June 2nd—an exceptionally late hour for the Lords. As expected, the Silverman clause was defeated by a very large majority—181 votes to 28. The minority was made up of 23 Labour peers, three Conservatives, one Liberal and one bishop (Chichester). Conservative, Liberal, and non-party peers composed the majority, with the addition of five Labour peers and one bishop (Winchester). Thus by a substantial margin the House of Lords rejected the argument that it ought not interfere with a decision made in a free vote of the Commons. The remaining parts of the Criminal Justice Bill, including the provision to abolish corporal punishment, went on to receive the Lord's approval, so that the bill was returned to the elected chamber minus one vital clause.

Press response to the Lords' decision was marked more by concern for the future than by elaborate judgments on the merits of the case. Even the newspapers that praised the result did so with an eye toward the impending reform of the upper chamber. For the *Daily Telegraph,* it had been a 'characteristically weighty and objective debate'. The *Nottingham Journal* was satisfied that 'what has happened to the Bill has vindicated completely the value and purpose of the House of Lords as a revising chamber'. The Lord's delaying

power, wrote the *Scotsman,* had been used in the public interest, and the *Evening News* was quick to congratulate the peers on their being 'more realistically aware of the people's views than are their elected representative'. Although we cannot know precisely what Britons were thinking on this occasion, the evidence strongly suggests that at least momentarily the stock of the Lords rose appreciably. Events of the following year proved that the chamber was not strong enough to forestall the dimunition of its powers for long, however.

Among the myriad observations on the Lords' action made by the pro-abolitionist press one theme stood out: the hope that some of the elements of reform could be salvaged by the introduction of a compromise scheme that would establish degrees of murder. Such a suggestion found expression in, *inter alia, The Times,* the *Observer,* the *News Chronicle,* and the *Economist.* Many commentators seized upon the speeches of Lord Samuel and the Archbishop of Canterbury as guides to a compromise that might satisfy the majority both in Parliament and in the country and at the same time serve to settle differences between the two Houses without loss of face on either side. The *Economist,* for example, proposed a solution whereby the Silverman clause would remain but would be amended to enable the Home Secretary to postpone its application until he sees fit, in the meantime continuing to use his reprieve power for all but particularly heinous murders.[60]

In any case, the nettle was back in the hands of the Government, which soon would have to decide either to invoke the Parliament Act and stand fully behind a clause that it originally had condemned, or search for a compromise that might placate the majorities in both Houses, or accept the Criminal Justice Bill denuded of the abolitionist clause and face the wrath of most of its Parliamentary supporters. One thing was now painfully clear: by permitting a free vote in the first place, the Government had opened a Pandora's box of political troubles that defied easy solution.

Amid such pressures the Government had to act with resolution. What it produced was a hastily drafted compromise clause, which was unveiled to a meeting of the Parliamentary Labour Party less than a week after the division in the Lords.[61] Reports indicate that this meeting was dominated by the Home Secretary, who gave the rationale of the compromise, by Sir Stafford Cripps, the Chancellor of the Exchequer, and by Herbert Morrison, Leader of the House, who urged acceptance for tactical reasons.[62] They were able to persuade the party's abolitionists that they could do little more than accept a compromise at this stage of the proceedings.

The task the Government set for itself in drafting such a proposal

was hardly an easy one. If the bill were to succeed, it would have to satisfy two quite diverse factions: the abolitionist majority in the Commons and the retentionist majority in the Lords. Two more widely separated stools would be difficult to imagine. On July 8th, a month after the meeting of the Parliamentary Labour Party, Ede released the text of the new clause.[63] It was another in the historic series of attempts to differentiate degrees of murder and assign to them different punishments. The clause would have established two classes of murder, one subject to the traditional death penalty, the other leading to a sentence of life imprisonment. The principle used to distinguish first from second degree murder was by no means clear. Presumably in attempting to draw the line between the two categories, the authors of the clause had taken into account known public feelings on the relative heinousness of various types of murder and certain cues they had picked up from the debate in the House of Lords.

More specifically, the compromise bill would substitute life imprisonment for hanging in all cases except those in which the jury found the crime to have been committed under the following circumstances:

1. Where the murder takes place in the course of committing one of a number of crimes set forth in a schedule: namely, robbery; burglary or housebreaking; wounding or 'inflicting grievous bodily harm by three or more persons acting in concert'; crimes committed by means of explosives or other destructive substances; rape and indecent assaults on females; and sodomy and indecent assaults on males.
2. Where the murder is committed in the course of resisting or preventing arrest, escaping from custody, or obstructing a policeman.
3. Where the murder is committed by a 'systematic administration' of poison.
4. Where the murder is committed by a person detained in prison and the victim was a prison officer.
5. Where the accused had been convicted of a previous murder.

The proposed act would run for five years, after which Parliament would appraise the experiment before permitting it to continue.

Even before the House of Commons had an opportunity to pronounce on it, the new clause received low marks from various British opinion leaders whose reaction ranged from at best lukewarm approval to active hostility and ridicule. The mass press had a field day instructing its readers in the 'proper' murder techniques, i.e. how to commit crimes for which they could not be hanged under

the proposed new law. For their part, newspapers which supported the abolitionist position could scarcely muster more enthusiasm for the clause.

The Government's compromise amendment will not really do [wrote the *Manchester Guardian*]. It does not fulfil the aims of those who voted to suspend the death penalty and does not meet the objections of those who are against the experiment. It may result in fewer people being hanged. But that is not the point. Most abolitionists are not moved by sorrow for murderers but by the belief that, first, the death penalty is not an effective deterrent to murder anyway; and second, that its use fosters a morbid excitement in many people . . . and imposes acute emotional strain on those who have to carry out the sentence. To reduce the number of executions meets neither argument. On the other hand, the retentionists believe that the death penalty is an effective deterrent, and will regard a statutory limitation of offences as a marked weakening of the deterrent effect . . .

If the right course was to retain the death penalty but to make less use of it, then the better way to follow it would be for the Home Secretary to exercise more fully his prerogative.[64]

There was a rush to point out anomalies in the bill. For example, in a much-cited letter to *The Times,* Lord Simon laid out a number of hypothetical murder cases which, he felt, proved how utterly illogical the application of the bill would be.[65] A husband who deliberately drowns his wife to marry another woman cannot be hanged under it; a parent convicted of deliberately starving a child to death escapes the hangman; and a ruffian who waylays and kills a child is guilty of only second-degree murder unless the jury is satisfied that he aimed at a sexual offence. Lord Simon reminded the faithful readers of *The Times* that even Macbeth's murder of Duncan was, under the terms of the bill, strictly a second-class affair.

That all the abolitionists were not content with the compromise became apparent when there appeared on the Order Paper a second amendment in the name of a Labour Member, Anthony Greenwood, to totally suspend capital punishment for five years but leave it to the Home Secretary to order when that period would begin.[66] Both this and the government's amendment were debated on July 15, 1948, when the Commons took up the Lords' amendments to the Criminal Justice Bill.[67] For the occasion both the Labour and Conservative Parliamentary parties issued three-line whips, indicating that each party considered the vote of vital importance.

The Government's new clause was introduced by the Attorney-General, Sir Hartley Shawcross, who had abstained prominently on

the earlier division. After setting forth the general case for abolition, Shawcross went on to acknowledge that the Government had to take into account the Lords' decision and increased evidence that the public, undoubtedly out of ignorance and unwarranted fears, was plainly opposed to total abolition of the death penalty at the moment. He was not prepared to carry Burke's dictum to the point of disregarding public opinion out of hand. Instead, he now proposed 'fully to meet the anxiety which has been expressed by public opinion . . . and that involves a compromise'.[68] He urged his fellow abolitionists to settle for half a loaf, even if it came in the form of an amendment that would not stand up to the canons of cool logic. In a candid phrase, the Attorney-General made plain the underlying rationale of the new clause: 'to include those cases in which public opinion feel that the suspension of the existing arrangements in regard to the death penalty might involve taking risks which ought not to be taken at this time'.[69]

The Opposition broadsides were delivered by its leader, Winston Churchill. In his view, the Attlee Government had committed grievous procedural and substantive errors on this bill. It had abdicated responsibility in the first place by permitting a free vote on a matter clearly within the purview of its own powers. To a believer in strong executive power like Churchill, this was nothing less than 'an issue of principle, on which it was the duty of the executive Government to make up their minds'.[70] Instead, the Cabinet took the path of cowardice and sacrificed what they clearly knew was their duty in order to reach agreement in party circles. This folly was corrected only by the action of the Lords, who showed themselves far more truly representative of public opinion than did the majority in the Commons. Now the Cabinet was attempting to salvage its position by hastily putting forth 'a mere jumble of points which seem popular at the moment' in the hope, not of reaching a more humane system of criminal justice, but of getting out of an awkward Parliamentary difficulty.

Churchill found the new provisions absurd and dangerous. They would weaken a jury's sense of responsibility and bring the law of the land into disrepute. The most frequent types of murder—wounding, stabbing, strangling, etc.—committed from the most wicked motives will not carry the death penalty.[71] Rather than adopt such a clumsy change in the law, it would be far better to rely on the Home Secretary's present reprieve powers—'by far the most elastic, sympathetic, and comprehending process that can possibly be used'.

By now the issue had become joined along party lines, and Conservative after Conservative rose to echo the sentiments of their leader, vying with each other in pouncing upon anomalous sections

of the new clause. For instance, Quintin Hogg (now Viscount Hailsham) asked the House to imagine advice that a lawyer might give to his client: 'Remember, madam, one glass of poison only, otherwise we shall have to foreswear the use of poison altogether'.[72]

Most of the abolitionists who took part in the debate gave unenthusiastic support to the Government's decision. Their mood was perhaps best summed up in the remarks of Sydney Silverman, author of the original amendment. He acknowledged that he would vote for the new clause simply because the only choice left to abolitionists now was between more hangings and less hangings. He estimated that of the 51 persons executed since 1945 under the existing law, 28 of them would not have received a capital sentence if the compromise clause had been in effect. At this point, he declared, the argument must follow pragmatic rather than rational lines. He would vote for the clause without enthusiasm but (in an ominous phrase) 'in confidence that the Government will insist that the House of Commons will have the last word in this affair'.[73] Silverman urged his fellow abolitionists to choose the Government's amendment in preference to the Greenwood Amendment giving the Home Secretary discretion in putting abolition into effect, on the ground that the latter would put too great a burden on the shoulders of one man, the Home Secretary, and show Parliament as lacking the courage to make a moral decision. On this point he was supported by the Home Secretary himself, who intimated that the effect of the Greenwood amendment would be simply to extend the present practice.

Voting on the several proposals took place in an atmosphere of mounting excitement. By a margin of 307 votes to 209, the Commons agreed to disagree with the Lords on the suspensory clause and to substitute the Government's new measure. Except for a few Independents, the majority was made up entirely of Labour Members, including a number of Ministers who had abstained in the April free vote. Almost all the Conservatives in the chamber were arrayed against the clause.[74] They were joined by several Independents, six Liberals and six Labourites. It is revealing to note that all of the Liberals and two of the Labourites voted against the clause for a different reason than that compelling their Tory bedfellows. They could not bring themselves to support the compromise because they considered it a betrayal of the abolitionist cause, not because they opposed any change in the law of murder.[75]

With the end of the session drawing near, events began to move even more rapidly. Five days after its passage by the Commons, the compromise clause was taken up by the House of Lords.[76] Although one of the aims of the Government's proposals was to

satisfy some of the objections raised by the Lords in their debate on the original clause, it was clear from the beginning of the debate that the Lords were in no mood to accept the Government's handiwork. The debate itself added little to what already had been said in the House of Commons. The Lord Chief Justice and the other Law Lords battered away at the obvious anomalies and held up to ridicule the Government's true motives in drafting such a compromise. The Lord Chancellor, again noticeably embarrassed, damned the clause with less than faint praise.[77] Abolitionist forces were further demoralised when their acknowledged leader, Lord Templewood, declared the clause to be unworkable and objectionable and announced that he would vote against it on the ground that the same result could better be achieved by a more liberal use of the Home Secretary's traditional reprieve power. Riddled by its critics and scarcely defended by its supporters, the compromise clause went down to defeat in the Lords by a vote of 99 to 19.[78]

Once again the ball was passed to the Government. The Criminal Justice Bill was returned to the House of Commons without either the abolition or the compromise clause in it, and the Government now had to decide whether it should acquiesce in the action of the Lords or press the death penalty question into further stages. The first option would allow the remainder of the bill to pass into law without delay, as the Houses were in disagreement only over Clause 1. But if the Government chose to fight the Lords' decision, it would mean the loss of the entire bill for the session and probably for some time to come. There were two reasons for this grim prospect. First, it was now very late in the Parliamentary session—and in the life of the 1945 Parliament. With a tight timetable and a full agenda of items for action (including the nationalisation of iron and steel), the Labour leadership could ill afford to have the whole Criminal Justice Bill thrown into the next session. In the second place, with less than two years remaining in the Parliamentary term the machinery of the Parliamentary Act could not be used to repass the compromise clause over the objections of the House of Lords because the amended form of the clause was not in the bill when it originally went to the Lords.

Thus the only means by which a bill containing the compromise clause could become law would be by the introduction of yet another bill in the next session. Deprived of other alternatives, and concerned lest the whole reform bill should fall victim to this controversy, the Government was forced to advise the House of Commons not to persist in their disagreement with the second chamber and to drop all references to the death penalty from the Criminal Justice Bill.

The Home Secretary made this recommendation to a tense and crowded House of Commons two days after the Lords had voted.[79] In outlining his position he pleaded for the support of all parties for the now stripped-down reform measure and promised that the Government would continue to explore the status of capital punishment in the hope 'that it may then be possible for Parliament to give further consideration to this question as a separate issue'.[80] The announcement left the abolitionist forces in the House desperate and divided. Some, like the Conservative Christopher Hollis, were prepared to accept the decision but urged the Government to appoint a body of responsible citizens to inquire into the entire problem. Others, like Silverman and Paget, voiced their feeling of betrayal and offered to support the decision only if the Government promised to introduce immediately a one-clause abolition bill implementing the April free vote. When the Leader of the House made it clear that the Government was not prepared to do so but must have 'more time to consider the issue', Silverman indicated that on the vote the Government would face a revolt among its own supporters. By now the House and the public had become rather tired of the controversy, and it surprised no one when the result of the division was announced: 215 to 34 for accepting the Lords' deletion of the compromise clause.[81]

For the moment the fight in Parliament was over. In nine months Parliament had inscribed a wide circle, ending by passing just about the kind of law the Government had asked for in November 1947. Its tortuous journey had been marked by dilemma, embarrassment, recrimination and irony; but it would be a mistake to conclude that the effort had been wholly futile. The intense discussion of capital punishment, both inside and outside Parliament, had brought the question to the forefront of public consciousness, and the residue of feeling was sufficient to guarantee that this time decades would not pass before the issue were raised once again in the Palace of Westminster.

Two separate but related events confirmed the general impression that, at least for the moment, no important changes in the law of murder were in the offing. At a meeting held a day before the House of Commons agreed to abandon the compromise clause, the executive committee of the National Council for the Abolition of the Death Penalty concluded that a situation had been reached in which there was little prospect of immediate activity or even interest in the capital punishment question. The Council's funds had been nearly exhausted, its secretary had decided to take a job with a probation officers' association, and hope had run out that this Parliament could produce the desired reform of the law. The committee's appraisal of the political situation is revealing:[82]

It was suggested in some circles that the Government would introduce a separate single clause bill to deal with the matter . . . . but this would create an entirely new situation. A Government bill would be based on compromise proposals, which would be open to the same objections as the recent suggestions have been, and would not have the support of the abolitionist Members of Parliament, who had only agreed not to oppose the compromise in the hope of saving the Criminal Justice Bill. The Government would, therefore, be faced with opposition both from its political opponents and from the abolitionists within its own ranks, and the only way to meet this would be to bring in a Bill providing for the suspension of the death penalty, which would thus become law in 1950 on the eve of a general election. This possibility seemed to be very remote in view of the considerations apparently in the minds of the leaders of the Parliamentary Labour Party.

With such a prospect before them, the leaders of the National Council chose to disband the organization and merge its activities with those of the Howard League. Although there was already some overlapping of membership in the two groups, the Howard League stood to gain members by this move, and it agreed to set up a special death penalty sub-committee to keep the issue alive and to prepare for the next round of the struggle.[83]

The second event was the announcement on November 18, 1948, that the Government was to appoint a Royal Commission on Capital Punishment. Although at the time neither the Royal Commission's membership nor its terms of reference were revealed, it was apparent from the announcement that it would not take up the question of abolishing the death penalty but only the possible means of limiting its operation.[84] The Government was now eager to lower the temperature of the controversy and take it out of the arena of Parliamentary politics, and a convenient way of doing this was to invoke the aid of a group of disinterested non-Parliamentarians. Of course the formation of a Royal Commission also guaranteed that the capital punishment issue would be kept alive at another level, and it assured the abolitionists that it would eventually be re-opened in Parliament. Nevertheless, the events leading to its establishment and the narrow scope of reference given to the inquiry hardly comforted the abolitionists. They still recalled that they had clearly felt victory to be within their grasp when Labour came to power in 1945. That victory had been crowned with irony, and their own labours had seemingly spawned a mouse.

NOTES

[1] *The Annual Report of the Howard League for* 1946-47 stated that 'it is surely unthinkable that a Government which contains such distinguished champions of abolition, when they were out of office, should make any effort to prevent the House from obeying the dictates of humanity and profiting from the experience of abolitionist countries'. Pp. 5-6.

[2] Frank Dawtry and Theodora Calvert to J. Chuter Ede, October 19, 1946. Howard League Files.

[3] The NCADP office occasionally drafted letters to be sent by individual members so as to increase chances of publication and prevent conspicuous identification with an interest group.

[4] National Council Minutes, February 28, 1947.

[5] National Council Minutes, April 25, 1947.

[6] *Annual Report of the Howard League for* 1946-47, p. 4.

[7] National Council Minutes, July 11, 1947.

[8] *Ibid.*

[9] Frank Dawtry to Winston Churchill, November 22, 1947. Howard League files.

[10] 'Who could have imagined that this immensely powerful government, containing probably more idealists to the square vote than any of which there is biographical record, would reject the opportunity afforded by a great penal reform Bill to abolish the death penalty?' C. H. Rolph, 'Cat and Hangman', *New Statesman and Nation,* 34 (November 15, 1947), p. 386.

[11] It is interesting to note that both Maxwell's and Newsam's views of capital punishment were not clearly known to any besides themselves and perhaps a few associates. The writer was told by students of the subject on various occasions that (1) both were retentionists, (2) Maxwell was an abolitionist and Newsam a retentionist, and (3) both were 'at heart' abolitionists. Ede took the third view in a conversation with the writer, May 13, 1958. The anonymity of higher civil servants is bound to give rise to such divergent interpretations.

[12] Seven Labour Members met on November 6, 1947 and agreed to approach Ede to try to persuade him to allow a free vote on an abolition amendment. Two motions soon appeared on the Order Paper, one in the name of Sydney Silverman, instructing the committee to which the Criminal Justice Bill might be committed to add a provision suspending the death penalty for five years, another by Hector Hughes, urging the committee to divide the crime of murder into two degrees, with capital punishment retained only for first degree murders. 444 *H. C. Debs.* 2134 (November 27, 1947).

[13] *Ibid.,* 2157. The announcement, according to *The Times* report, 'was received with cheers, which were renewed when Mr Ede added that no attempt would be made to coerce the conscience of any individual member of the House'. November 28, 1947. No one asked whether 'any individual member' meant Minister as well as backbencher, and both sides of the House seemed content with this resolution of the difficulty.

[14] Journalistic response to the situation was scattered and slight. *The Times* canvassed alternatives and came down in favour of experimental abolition. In a more direct fashion *The Manchester Guardian* and *The Observer* supported the amendment. Few of the popular London dailies or the provincial newspapers took note of the issue; those that did split about evenly in their support. The most heated reaction came in letters to the editor. For a time hardly a day passed without *The Times* printing the latest volley from one of its readers, raising a new point or calling into

doubt the logic of a previous letter. In one such letter George Bernard Shaw called forth the collective wrath of the abolitionists by demanding the liquidation of all insane and psychopathic criminals who showed little promise of being reformable. *The Times,* December 5, 1947. Writing for a rather different audience, Shaw put his case more bluntly: 'But the ungovernable, the ferocious, the conscienceless, the idiots, the self-centred myops and morons, what of them? Do not punish them. Kill, kill, kill, kill, kill them.' *Sunday Express,* December 7, 1947.

[15] Memorandum in the files of the NCADP.

[16] The abolitionists hoped that their amendment would be first among those chosen by the Speaker at the Report Stage, for they were anxious to keep the battle lines clearly drawn between their position and that of the Government. It was of some concern to them that two attempts were being made elsewhere to gain support for the idea of degrees of murder. A motion to this effect by a Labour Member, Hector Hughes, was already on the Order Paper, and early in January a Conservative barrister, Basil Nield, tabled an amendment which would draw fairly specific lines between first- and second-degree murder, with hanging reserved for the former. (The provisions are given in *The Times,* January 6, 1948.) It was unclear whether these proposals would lure away mild abolitionists from the Silverman amendment; but in their approach to undecided M.P.s, the abolitionists took pains to emphasize the failure of all previous attempts to formulate a workable legal differentiation of murder cases.

[17] See *The Methodist Recorder,* December 11, 1947, and *The Western Mail* (Cardiff), January 23, 1948, for examples of Methodist and Congregationalist action.

[18] The Howard League, through its Parliamentary Penal Reform Group, tables dozens of amendments to the bill and later took credit for ten of those that were accepted by Parliament. *Annual Report of the Howard League for* 1947-48, pp. 4-5.

[19] Typical is the following request from a Conservative abolitionist: 'I am anxious to be able to meet the argument that if capital punishment is abolished then policemen will run greater risk of murder in the fulfilment of their duties, and the way to meet it seems to be to show that there were, in fact, no increases in murders of policemen following an abolition in other countries. I wonder if you have any statistics to that effect. Also I want to meet the argument that if there is no capital punishment, the burglar is more likely to kill.' C. Hollis to F. Dawtry, March 23, 1948. Howard League Files.

[20] British Institute of Public Opinion, Survey 158, November 5, 1947. The wording of the question used in the poll was slightly ambiguous. It read: 'In this country most people convicted of murder are sentenced to death. Do you agree with this or do you think that the death penalty should be abolished?' As was indicated in Chapter 1, a sentence of death may not necessarily lead to an execution because of the distinct possibility of a reprieve being granted. Thus the alternatives posed by the question do not exhaust the possibilities.

[21] BIPO, Survey 150, June 5, 1947. The question quoted in footnote 20 was used in this poll.

[22] That the same ratio did not hold true for the more active followers of the controversy is indicated by an *Evening Standard* report that in a single week following the publication of a plea for abolition by Lord Templewood, it received 'hundreds' of letters whose sentiments were analyzed as follows:

	Per cent
For abolishing the death penalty altogether	45
For retaining the death penalty	40
For instituting degrees of murder	12
For giving the convicted murderer the choice between death or a life sentence	3

[23] See the debates between Sir Roland Burrows, K.C., and Miss Margery Fry of the Howard League in the *Daily Herald,* April 14, 1948, and between Basil Nield, K.C., M.P. and the playwright William Douglas Home in the *Daily Mail,* on the same day.

[24] The Parliamentary Correspondent of *The Times,* April 15, 1948.

[25] *The Observer,* April 18, 1948.

[26] 449 *H. C. Debs,* 979-1103 (April 14, 1948). A useful summary of the debate is found in Viscount Templewood, *The Shadow of the Gallows* (London, 1951), pp. 112-121.

[27] Dawtry was concerned about the three mentions that had been made of Paterson's testimony, and he sent a note to Paget that read: 'Alexander Paterson was a very cautious man who never made any public statement on this matter. When I took on this work [with the NCADP] he did wish me every success.' Dawtry was horrified at Paget's headlong assertions, and the following day he took steps to get the Press to play down the matter, to send a statement to the Home Secretary's office, and to correct his statement at the earliest opportunity. National Council Minutes, April 23, 1948.

[28] While Paget's speech might conceivably have swung one or two undecided Members, the time that he took to deliver it enabled a large party of retentionists, including Churchill, to get back from a Mansion House dinner in time to cast their votes in the negative. The Paget incident nevertheless provided a future Home Secretary, Major G. Lloyd George, with a convenient explanation of why he voted for the Silverman amendment in 1948 but opposed an almost identical clause in 1955, when he headed the Home Office. See page 111 below.

[29] April 15, 1948.

[30] R. H. S. Crossman in the *New Statesman and Nation,* 35 (April 24, 1948), 326. It must be recalled that the vote took place only a short time after the Nenni telegram incident, in which the Labour Party had disciplined or threatened to discipline 36 left wing M.P.s for their 'intervention' in the Italian general election.

[31] *The Times,* April 16, 1948.

[32] Another clause that came before the House that evening — Hector Hughes's attempt to establish two degrees of murder—died for lack of a seconder. 449 *H.C. Debs,* 1104 (April 14, 1948).

[33] No attempt has been made here to estimate the circulation or readership of these newspapers.

[34] *The Police Chronicle,* April 23, 1948.

[35] As reported in the *Daily Telegraph,* April 22, 1948.

[36] As reported in *The Manchester Guardian,* June 10, 1948.

[37] April 23, 1948.

[38] April 22, 1948.

[39] April 23, 1948.

[40] The *Daily Mail,* April 22, 1948; the *Scotsman,* April 28, 1948.

[41] As reported in *The Times,* April 22, 1948.

[42] A fourth sampling of opinion, a compilation of letters to the *Daily Mail* on the subject, is not included because it made no pretence of sampling scientifically. The *Mail* reported, however, that the VOICE OF THE PEOPLE showed 43 to 1 FOR HANGING. April 23, 1948.

[43] *Daily Express,* April 29, 1948. This poll is suspect not only because of its unrevealed sampling techniques; it also posed an inaccurate question. Under the terms of the Silverman clause, capital punishment was to be *suspended experimentally* for five years, not completely and finally abolished as the *Express* question put it.

[44] BIPO, Survey 167, May 10, 1948. The results of the Gallup poll appeared regularly in the *News Chronicle.*

[45] *Daily Telegraph,* May 28, 1948. Also published as a pamphlet, 'Capital Punishment: A Survey' (London, 1948). For a discussion of the differences between Mass-Observation's polling techniques and those of other polling organizations, see L. R. England, 'Capital Punishment and Open-End Questions,' *Public Opinion Quarterly,* XII (Fall, 1948), 412-416.

[46] Mass-Observation, 'Capital Punishment: A Survey,' pp. 14-15.

[47] A few of the comments from those favourable to abolition:

'I agree. I never liked to hear of anyone being sentenced to death.' (Scottish shoe repairer's wife, aged 60.)

'I think people who do that sort of thing are insane myself. I think they should be put away in an asylum and treated well.' (Woman cashier, aged 24.)

'It should be abolished. Hanging interferes with Providence.' (Catholic brewery worker, aged 46.)

[48] The comments of those opposed to abolition included the following:

'I say they're damn fools. It ought still to be the extreme penalty, otherwise you're going to get robbery with violence at a premium.' (Civil servant, aged 56.)

'The death penalty is a splendid punishment. It's a life for a life. That's an old saying.' (Control Commission officer, aged 30.)

'I think we will stand a good chance of fostering gangsters, that's all. A man's going to get the idea that he might as well be hung for a sheep as for a lamb. If he's caught housebreaking, he's likely to shoot his way out. He's no reasonable deterrent, has he?' (Clerk, aged 35.)

[49] *The Times,* May 12 and 24, 1948.

[50] P. A. Bromhead, *The House of Lords and Contemporary Politics,* 1911-1957 (London, 1958), p. 217.

[51] See *The Times* leader for April 27, 1948. Typical of the retentionist enthusiasm for the Lords was the *Daily Express* leader, 'Lords to the Rescue,' on the same day, and the *Daily Telegraph's* plea for a speedy rejection of the clause, June 1, 1948.

[52] On April 27, 28 and June 1, 2, 1948, contained in Volumes 155 and 156 of the *House of Lords Debates.* A useful summary is found in Templewood, *op. cit.,* pp. 121-131.

[53] 155 *H. L. Debs.* 398 (April 27, 1948). In the second debate the Lord Chancellor made his feelings even more plain. 'I was a party to a bargain. I agreed that this matter should be left to a free vote and I agreed to stand by the result of that free vote . . . but certainly your Lordships have constitutionally . . . the perfect right to send the clause back to another place for further consideration if you are so minded.'

[54] 155 *H. L. Debs.* 485-492 (April 28, 1948); 156 *H. L. Debs.* 116-121 (June 2, 1948).

[55] After the Lords division Lord Goddard admitted that he had been in error on this point, for two judges were found to hold other views. His mistake was treated much more lightly by peers and Press than Reginald Paget's similar error made in the House of Commons. See the report in *The Times,* July 1, 1948, and the indictment of the Press reaction in the *New Statesman and Nation,* 36 (July 17, 1948), p. 42.

[56]Cmd. 7419. Templewood's request for information was only partially satisfied in the White Paper, which contained statistics on the experience of foreign countries but no analysis of murders in Britain since 1945. For a criticism of the document see *The Manchester Guardian* leader for May 31, 1948.

[57]Viscount Stansgate, a former Labour M.P., insisted that 'the House of Commons can be a wonderful guide to the public conscience . . . One of the most demoralizing influences on politicians today is the Gallup Poll.' 156 *H. L. Debs.* 61 (June 1, 1948).

[58]*Ibid.*, col. 46.

[59]155 *H. L. Debs.* 415-418 (April 27, 1948). Under Lord Samuel's plan, a fresh consideration of the policy would take place every five years.

[60]154 (June 5, 1948), p. 919.

[61]Reports of the June 9th meeting are found in *The Times*, June 10, 1948, and the *Economist*, 154 (June 12, 1948), pp. 959-960.

[62]The roles played by Cripps and Morrison were of particular importance for understanding why the abolitionists acquiesced in the compromise. It had been Cripps who led the passive resistance of more than forty ministers and whips to the Government position on the April 15th free vote, and his standing among Labour abolitionists was accordingly high. Morrison's concern was chiefly with matters of party strategy. On the very day of the meeting, the House of Lords was scheduled to vote on the second reading of the Parliament Bill, which severely curtailed that chamber's suspensory veto power. Understandably, Morrison was anxious to prevent a battle with the House of Lords on two fronts at once, particularly since on one of the measures the expressed will of the upper chamber was by no means unpopular in the country. In the words of the *New Statesman and Nation*, 'In short, the case for compromise on the death penalty is political, not constitutional. The House of Lords would no doubt much prefer to fight their battle with the Government on capital punishment rather than on a complex and emotionally unexciting Steel Bill.' 35 (June 12, 1948), p. 469.

[63]*The Times*, July 9, 1948. The entire clause is contained in 453 *H. C. Debs.* 1417-1418 (July 15, 1948).

[64]Leader, 'The Death Penalty,' July 15, 1948.

[65]July 10, 1948.

[66]The text of the Greenwood amendment is given in 453 *H. C. Debs.* 1429 (July 15, 1948).

[67]*Ibid.*, 1417-1535.

[68]*Ibid.*, 1426.

[69]*Ibid.*, 1430.

[70]*Ibid.*, 1439.

[71]He paraphrased one section of the clause in the following manner: 'You can stab her. You can cut her throat or dash her brains out. You can set her on fire, push her off the station platform in front of an oncoming train or push her through the porthole of a ship. Or, more easily, you can drown her in the bath. "But whatever you do," say the Government, "you must be careful not to invite more than one confederate to help you, otherwise your immunity will be gone."' *Ibid.*, 1449.

[72]*Ibid.*, 1505.

[73]*Ibid.*, 1469.

[74]On this occasion Tory abolitionists followed party instructions and voted against the compromise; whether they did so for political or conscientious reasons is difficult to determine.

[75]A second vote, on the Greenwood amendment suspending the death

penalty but leaving the decision of when to bring it into force to the Home Secretary, also brought a Government victory.

[76] 157 *H. L. Debs.* 1009-1074 (July 20, 1948).

[77] Viscount Jowitt, *ibid.*, 1074: 'Perhaps I have gone a little too far in assenting to this scheme. I daresay it is not very well drafted.'

[78] Fifteen of the favourable votes came from Labour peers, including those of the Lord Chancellor and the Leader of the House of Lords.

[79] 454 *H. C. Debs.* 707-752 (July 22, 1948).

[80] *Ibid.*, 710-711.

[81] Compared with earlier Commons votes on the question, this division was notable for absenteeism and abstention on the Labour side. The majority consisted of 129 Labourites, 83 Conservatives, two Liberals and one Independent, while the minority was made up of 33 Labour abolitionists (Silverman among them) and one Labour Independent.

[82] National Council Minutes, July 21, 1948.

[83] *Annual Report of the Howard League for* 1947-48, pp. 5-6. The merger was approved by the membership of both organizations.

[84] Ede was explicit on this point. The scope of the Royal Commission would include nothing broader than 'the question whether liability under the criminal law in Great Britain should be limited or modified, what alternative punishment can be substituted and what are the changes in the law and the prison system involved in any alternative punishment.' 458 *H. C. Debs.* 565 (November 18, 1948).

CHAPTER 3

BETWEEN PARLIAMENTARY STORMS

THE announcement that a Royal Commission was to deal with the question of capital punishment brought relief and satisfaction in many quarters. Particularly among the supporters of the death penalty, it was assumed that this action had pushed any resurgence of the controversy well into the future—at least until after the next General Election, conceivably many years beyond it. Any hopes that the issue would remain permanently buried were to be frustrated, however, for within seven years of the passage of the Criminal Justice Act the question of capital punishment was back in the lap of Parliament, this time under rather different political circumstances.

It is almost impossible to say which of the many events of this interim period were clearly responsible for bringing the death penalty issue to the fore once again. Historical causation is tricky business. Nevertheless, an appraisal of relevant data and interviews with the persons deeply involved in the events have led the writer to two conclusions. The first is that the renewal of the controversy in the middle 1950s can be attributed chiefly to the convergence of several forces at a particularly ripe moment in recent British history. These developments were incapable of being planned but were capable of being manipulated. Second, of the several events that rekindled popular interest in the abolitionist programme, three stand out as clearly the most significant: the activities and the Report of the Royal Commission on Capital Punishment; a series of peculiar and much-publicized murder cases taking place in the early 1950s; and the formation and work of a new abolitionist organization, the National Campaign for the Abolition of Capital Punishment. There were in addition many other forces at work at the same time, some of them carry-overs from the efforts of 1947-8 (such as the single-minded persistence of Sydney Silverman and the abolitionist M.P.s), some of them new to the scene (such as the inclusion in the 1950, 1951 and 1955 Parliaments of a new brand of Conservative M.P.). But the impression remains that the limited successes enjoyed by the abolitionists after 1955 were largely due to the combination of the three events first mentioned.

The present chapter is concerned with the Royal Commission, chosen more for chronological than for causal primacy.

From the very circumstances of its origin it was clear that the Royal Commission on Capital Punishment had been commissioned to perform other functions than merely inquiring into the law of murder and the methods of punishment then in force. Its position can be understood fully only in relation to the foregoing events and the special dilemma of the Attlee Government in 1948.

Professor K. C. Wheare has shown that in many cases the motives that lead a Government to establish a Royal Commission may be unrelated to the overt functions that such groups are asked to perform, such as discovering the facts of a situation, making policy recommendations, and educating the public.[1] Committees may also exist to pacify, to delay, to nullify, and to camouflage for form's sake. The Royal Commission on Capital Punishment can be regarded as serving to pacify those Members of Parliament and the public who had come to feel that the law of murder was in need of *some* re-examination and *some* change. Moderate opinion might be placated in such a way, but the restrictions on the scope of the investigation hardly assuaged strong abolitionist feelings. It was also a committee to postpone, both because the Government in anticipation of a General Election wished to push the question of capital punishment from sight and because it was convinced that it could do little more on the question until the public had a better chance to inform itself.[2] Professor Wheare has noted that the subject of capital punishment was not one on which a Royal Commission could itself offer much advice, but that simply by making available the evidence a Commission could help educate and crystallize public opinion for later political decisions.[3] Finally, the Commission may be viewed as a potential instrument of nullification, not in the sense that it was expected to report against all change but as a convenient device for keeping the subject so far out of sight—and so technical—that the public would lose interest entirely in the subject. There were, after all, persons highly placed in the Cabinet and the Home Office who were set against basic change and could be counted on to support any effort that could be made to push the capital punishment issue below the surface for a few more years. There has been a long history of once-hot controversies consigned to oblivion by reference to Royal Commissions. At worst, they might have felt, the question would bob to the surface at an unpropitious moment, when Parliament and the nation were engaged in more compelling pursuits, and not be taken up for lack of dramatic interest. There was a danger that such a strategy might backfire, of course, but it was a risk that needed to be taken if proper form was to be observed.

Thus the Royal Commission played several roles not immediately visible in its minutes of evidence or the compendious report

it issued. This is not to say that it was created to deceive the public or to abuse the powers of government. As the Prime Minister pointed out at the time he announced the Commission's establishment, the Government still had the responsibility for formulating and applying public policy, and Parliament was to be the final judge in all matters of legal reform. 'If governments seek to pacify people, if they seek to buy time, if they wish to put a project to sleep . . . that is often a legitimate activity. It is seldom that the public is intentionally deceived.'[4]

When the terms of reference of the Royal Commission were announced, the abolitionists were quick to question the motives behind its formation. In particular, many of them were worried lest the public would forget the narrow confines of the inquiry and take its report as evidence against the whole idea of abolition. These fears were well expressed by the *Economist*:[5]

> It is worth recalling that the main controversy is not whether capital punishment should be limited or modified but whether it should be abolished. A lesser controversy is whether it should be abolished now, at a time of depleted police forces and abundant crimes, or whether is has sufficient deterrent effect to justify its retention for the time being. What was never really controversial, because it was so transparently silly, was the Government's proposal to modify the law of capital punishment by dividing murderers into two classes, less heinous and more heinous . . .
>
> Yet it is this proposal, ridiculed by the House of Lords, opposed by the Opposition in the House of Commons, and disliked by the Labour abolitionists, which in substance will form the Royal Commission's terms of reference.

In criticizing Attlee's defence of the Commission's terms of reference on the ground that the main issue was one on which unanimity could never be achieved by any group, officers of the Howard League also pointed out that British democracy was based not on the need for unanimity but on majority rule and a fair hearing for the minority.[6]

The abolitionists' hostile image of the Attlee Government, which had grown as a result of the events of 1948 and the seemingly sterile prospect of change through a Royal Commission possessed of narrow powers, was reinforced by another development during this period. From the time that the Silverman amendment had appeared on the Order Paper in late 1947 until November 1948—a period that embraced the Parliamentary stages of the capital punishment controversy—no one had been executed for murder. It had been assumed by the abolitionists that this was in line with

the liberal reprieve policy that Home Secretary Ede announced to the House of Commons after the initial success of the Silverman abolition clause in April.[7] Many abolitionists took the position that part of the unwritten agreement by which the Houses consented to the withdrawal of the compromise clause in July had been a pledge by the Home Secretary to carry out the spirit of the decision through a wider use of his prerogative. Indeed, from an examination of murder cases during this period, it appeared as though he was scrupulously following this course. But in November 1948, hard on the heels of the announcement that a Royal Commission would sit, two men were allowed to hang for murder under circumstances that seemed to many unwarranted in the light of events of preceding months.[8] Abolitionist groups took this as a sign that the Government's policy was now far removed from the spirit of the Commons' majority, and it reduced even more their faint hope that the Royal Commission might somehow cut through to a substantive change in the law of murder.

Although there was considerable public discussion of the need for a Royal Commission and of its powers, there was no criticism of the composition of the group when it was announced.[9] As chairman of the Commission the Government selected Sir Ernest Gowers, a retired civil servant with a long and distinguished career in public life, including service as chairman or member of numerous committees of inquiry into a wide range of problems.[10] The other twelve commission members were a varied group and cannot easily be characterized.[11] Three observations about them can be made, however. First, they were representative of fields of activity rather than of distinct points of view or 'interests' in the usual sense of the word. Second, the group was divided roughly half-and-half between experts and lay figures, at least in terms of the subject matters of the inquiry. Finally, although undoubtedly each member had his opinion on the merits of retaining or abolishing capital punishment, none of them had voiced his views publicly during the late controversy, and none was conspicuously identified with either side. To find such persons probably was not an easy task, which may help explain why the Government took so long in announcing the composition of the Commission.

A few words should be said about the way in which the Gowers Commission gathered and weighed evidence. It began by taking evidence from individuals mainly in oral form, occasionally in writing. To obtain a full and representative slate of witnesses, the Commission placed announcements and general invitations in the newspapers and wrote to organizations that it believed had something to contribute on the subject. A scanning of the Commission's list of witnesses and correspondents gives the impression that prac-

tically every interested group (if not every individual with views on the subject) availed itself of this opportunity to get on record.[12] In addition, members of the Commission visited thirty prisons and penal institutions, eleven of them in Britain and the rest in Belgium, Denmark, the Netherlands, Norway, Sweden, and the United States. They tried to choose fairly typical British prisons, but in the foreign countries (notably in the first five named above) they sought out prisons that were organized along lines quite different from those in Britain, especially prisons for psychopaths.

It will be noted shortly that controversy arose over the question of how representative of their group's true views were some of the witnesses who came forth. Many of the 'expert' organizations whose opinions were solicited (e.g., the Prison Officers Association, the prison chaplains, the Howard League) were urged to send a panel of three or four members to state their association's viewpoints and answer questions put by members of the Commission. This did not prevent other members of such groups from coming forward, but undoubtedly it led to the concentration of officials and an under-representation of rank and file members. Especially in the case of the staff associations of prison officers, policemen, and chaplains, there was a tendency for the activists—association officers and strong-minded members—to 'choose themselves' as panel members and to present fairly institutionalized opinions on most of the topics put to them by the Gowers Commission. This situation is hardly unusual, of course; it is normal whenever a dispersed and loosely-knit group is asked to give its collective views before a public body. Groups appearing before the Commission were able to keep abreast of each other's testimony by means of minutes of evidence that were published by the Commission as it proceeded to collect information.[13] This served to keep the capital punishment question in the headlines, although seldom on the front page, in the early 1950s.

The Gowers Commission listened to an impressive array of witnesses. In Britain itself, 118 persons gave oral evidence and 29 others supplied letters and memoranda. They included public figures such as the Lord Chief Justice, the Archbishop of Canterbury, Bernard Shaw, Margery Fry, and four former Home Secretaries—Viscounts Samuel, Simon, Templewood, and Waverley.[14] Few of them could be termed laymen or completely disinterested parties; at least few were without organizational standing or some claim to expertise. The following is a consolidated list of the organizational connections of the persons who presented oral evidence to the Commission:

Association of Anaesthetists
British Medical Association

Central After-Care Association
Chief Constables Association of England and Wales
Chief Constables (Scotland) Association
Faculty of Advocates
Home Office
Howard League for Penal Reform
Institute for the Scientific Treatment of Delinquency
Institute of Psycho-Analysis
Metropolitan Police
Muir Society
Police Federation of England and Wales
Prison Chaplains
Prison Commission
Prison Governors
Prison Medical Officers
Prison Officers' Association
Scottish Central After-Care Council
Scottish Home Department
Scottish Police Federation
Scottish Prison Chaplains
Scottish Prison Governors
Scottish Superintendents' Council
Society of Labour Lawyers
Superintendents' Central Committee of England and Wales

In Europe, the Commission listened almost exclusively to experts—criminologists, prison officials, judges, doctors, criminal law professors—chiefly in the Benelux and Scandinavian countries. On its trip to the United States it took evidence from forty-one specialists, ranging from the Director of the Federal Bureau of Prisons to state supreme court justices to the Director of the Psychiatric Division of New York's Bellevue Hospital. In addition, it sent questionnaires to officials in the Commonwealth nations and eight American states (California, Connecticut, Massachusetts, Michigan, Missouri, New Hampshire, New York, and Wisconsin), the latter chosen for special prison conditions not present in Britain but relevant to the inquiry. These activities of the Gowers Commission, which contrasted strongly with the much-publicized junkets of American Congressional investigating committees, proved to be time-consuming and partially explain why the Commission took so long to prepare its report.

It is unnecessary to review here the voluminous testimony that was gathered in the course of the Commission's sittings. Even to attempt to do so would be a Herculean task, and one which would carry this study far beyond its subject, which is the political controversy over capital punishment. Students of criminology and the

criminal law will find the Minutes of Evidence rich in insights not only into the questions raised by proposed changes in prevailing practices, but also into the thinking of experts and the sensitivities of organized groups. Two observations concerning the conduct of the inquiry are relevant to our concern, however.

The first is that although the formal terms of reference of the Commission precluded anything more than an inquiry into how the death penalty could be limited or modified, in actual practice the Commission was forced to consider total abolition as an alternative. Many witnesses, especially those representing the police and prison services, the judiciary, and the Home Office, went out of their way to defend the *status quo* and underlined the difficulties and possible injustices that might occur if current practices were modified in the direction of abolition. Other organizations, such as the Howard League and the Society of Labour Lawyers, were equally insistent that slight modifications of the law of murder were at best palliatives and certainly no substitute for the benefits of total abolition.[15] The chairman was fairly strict in keeping the inquiry within its announced scope, but inevitably the abolitionist case was made both explicitly and implicitly, and the uninvited guest made its presence known frequently in the deliberations. That members of the inquiry could scarcely escape drawing certain conclusions was demonstrated two years after its report was issued, when Sir Ernest Gowers announced that he had been converted to abolition chiefly on the basis of what he saw and heard while serving as chairman of the Commission.

The second observation concerns the extent to which government officials ought to state personal views that conflict with the official policy of their superiors. This is really part of the larger question of whether it is desirable for public servants to have genuinely private political lives or to utter their own views on public policies.[16] As the meetings of the Gowers Commission proceeded, it became apparent to many abolitionists that some officials who were in a position to give telling evidence were either being discouraged from doing so or had convinced themselves that it was improper to deviate from the 'departmental view' on capital punishment. The *Howard Journal* put the case this way:[17]

> The Royal Commission has received little help from Whitehall. All officials of the Home Office and the Prison Service have, with marvellous unanimity, found nothing wrong with capital punishment nor the methods of hanging nor the Home Office administration of reprieves. The chaplains thought all the arrangements humane and the law of the death penalty in accordance with Christian ethics . . . The medical officers had no criticism to make

on the matter of the application of modern scientific knowledge in the treatment of murderers. The After-Care officials assured the Commission that practically all reprieved murderers made good, but they apparently were satisfied that those who were hanged were rightly hanged. It is difficult to believe that such a perfect system could spring from the finite mind of man.

Of course this façade of unanimity is false. There are members of the Prison Commission, Governors, Chaplains and prison officers who, if called, would repudiate all this complacency . . .

It should be . . . clear to men of intelligence that when the Government appoints a Royal Commission to inquire into a matter of public concern . . . the duty of the civil servant who can give useful and relevant evidence is to give it, and the duty of the 'Department' is to facilitate the giving of such evidence. Yet it is apparent that some able civil servants harbour the heresy that the 'Department' has a 'view', that this view (presumably of the higher ranks) must be sustained in public by those of the lower ranks whatever their personal opinions and experience.

In other words, the Howard League believed that relevant evidence was consciously being withheld, to the benefit of the supporters of the *status quo*. What evidence there is seems to substantiate some of these charges, although the situation probably seemed much less clear to the average civil servant at the time than it did to the Howard League. One can speculate as to why this should have been the case and arrive at several possible explanations. The first, hinted at in the Howard League's view stated above, is that strong departmental pressures were exerted upon those civil servants who might have been tempted to submit evidence contrary to the known 'departmental view' on the subject. The Home Office, for instance, has long had the reputation of being a fairly conservative Whitehall department; and because in its work it is seldom free from controversy and criticism, naturally it does all it can to avoid compounding the controversial. A few hints that the ministry would be unhappy with the expressions of certain views might be sufficient to make officials who were prepared to go before the Royal Commission reconsider this step. A second explanation is that over the years the British civil service has developed a kind of ethos, in which responsibility, hierarchy and anonymity play strong roles, which militates against the idea of a lesser civil servant publicly questioning the policies of his superiors. The British doctrine of personal ministerial responsibility in particular encourages a kind of defensiveness on the part of civil servants. As a prominent prison official wrote to the secretary of the Howard League, the only way he felt he could give this kind of evidence would be

to resign from the public service, a step he dared not contemplate. In the third place, it will be recalled that a considerable portion of the testimony taken from organized groups (police and prison officers' associations, chaplains, etc.) was given by panels of officials who tended to be the group's activists or representative of the most institutionalized opinion. Without the power of subpoena the Gowers Commission usually had to rely upon the witnesses who came forward voluntarily, often by a kind of self-selecting process, and they were unlikely to be critics of established practice.[18]

Convinced that important views had been misrepresented or unrepresented, the Howard League late in 1949 launched a discreet campaign to try to right the balance. It could hardly come out and blast the Home Office and the police and prison services, groups with which it had to work continually; but it could at least stimulate the timid to come forward, and it could hint to the Gowers Commission that until this happened, the testimony of the retention-minded groups was to be viewed as incomplete, if not actually dishonest. This was done in several ways. Through letters to the press the League brought the situation to a larger public and urged the Home Secretary to 'set his staff free to speak their minds without fear or favour'.[19] It conducted a canvass of former members of the prison service and obtained statements disputing the testimony of prison officers and chaplains and relating personal experiences of the terrible effect executions had on both prisoners and prison staffs. Many of these persons allowed their statements to be incorporated into a brief drawn up by the League for presentation to the Commission, or agreed to permit their names to be revealed to the Commission in private.[20] A few League members, including an ex-chaplain, sent memoranda directly to the Commission after having been urged to speak out.

The effect of this activity is impossible to judge. Certainly it served to bring to light a perennial problem confronting public inquiries into the activities of government and showed how a private interest group often is able to widen committee perspectives through activities denied to the committee itself. In this case it was the Howard League playing its role as the Home Office's 'loyal opposition' in a way that kept testimony before the Gowers Commission from being completely one-sided. And although the question of the representativeness of testimony was not directly relevant to the wider issue of the merits of the death penalty, the effect of this procedural squabble was to raise once again—both for the Royal Commission and for the public—questions that reached far beyond the Commission's terms of reference.

Despite continual prodding in Parliament and speculation in the

press, the Royal Commission took its time in drafting its report, which finally was presented to Parliament in September 1953, almost five years after it had been formed.[21] In the interim two General Elections had taken place, and a Conservative Government, considered to be less receptive to changes in the criminal law than had been Labour, was now in power. It was generally assumed that any proposals for radical reform would face tough sledding in the new Parliament.

The Royal Commission's report was written with the clarity and plainness of style of which Sir Ernest Gowers is both master and advocate. It covered an impressive array of questions dealing with the law of murder and the punishment of its violators, not all of which are relevant to this study. The Commission's decisions fell into several categories. First, there were those aspects of the law which it found to be satisfactory as they stood, or at most in need of only minor changes. For example, it supported the power of the Home Secretary to determine the actual length of 'imprisonment for life' sentences meted out to convicted murderers, and it came down in favour of hanging as the proper method of execution as against electrocution, the gas chamber, or lethal injections. Second, it rejected a number of proposals for reform that had been suggested to it, including those urging special legal provision for treating 'mercy killers' and female murderers and those advocating adoption in England of the Scottish doctrine of 'diminished responsibility'. Finally, the Commission made a set of proposals for fairly sweeping changes in the law of murder; and, as expected, it was this group of decisions that received more attention and criticism than any of the others.

It is important to note how the Gowers Commission conceived the central problem facing them before examining their specific recommendations, especially because their statement of it shows how close they came to swimming in the forbidden waters of the substantive issue of abolition. The most succinct expression of the Commission's premises is contained in three propositions:[22]

(1) The outstanding defect of the law of murder is that it provides a single punishment for a crime widely varying in culpability . . .
(2) This rigidity is at present mitigated by the use of the Royal Prerogative of Mercy. But this method is open to criticism, and it will be necessary for us, in considering whether liability to suffer the death penalty should be limited, to consider also whether the limitation at present effected by the Prerogative could be effected in some other way . . .
(3) These questions involve consideration of the purpose of capital punishment. Of the three purposes commonly assigned to punish-

ment — retribution, deterrence and reformation — deterrence is generally held to be the most important, although the continuing public demand for retribution cannot be ignored. *Prima facie* the death sentence is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment. There is some evidence (though no convincing statistical evidence) that this is in fact so; and also that abolition may be followed for a short time by an increase in homicides and crimes of violence. But there is no clear evidence of any lasting increase, and there are many offenders in whom the deterrent effect is limited and may often be negligible. *It is therefore important to view the question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.*

This statement clearly reveals how difficult it was for the Commission to work within terms of reference that precluded an examination of the merits of the death penalty itself. It also helps explain the somewhat fragmentary character of the recommendations it made. The most important recommendations came with respect to amending the law of murder and the procedures by which insanity and mental abnormality are taken into account in murder trials. They can be classified into several groups.

1. SPECIFIC PROPOSALS FOR AMENDING THE LAW OF MURDER

The Commission suggested that the doctrine of 'constructive malice' in English law should be abolished (except in a few types of cases).[23] It urged that in the determination of whether sufficient provocation was present to warrant a charge of manslaughter rather than murder, the law should make no distinction between provocation by words and other forms of provocation. It recommended a change in English law to provide that a person who 'aids, abets or instigates' the suicide of another person should not be found guilty of murder but should be punished with imprisonment for life; but if the survivor of a suicide pact himself killed the other party he should remain liable to be convicted of murder. Finally—a somewhat more controversial point—the Commission in a six to five vote suggested that the statutory age limit below which a person may not be sentenced to death be raised from 18 to 21 in both England and Scotland.

2. TESTS OF CRIMINAL RESPONSIBILITY WHEN INSANITY IS USED AS A DEFENCE

The Royal Commission accepted the increasingly widespread view

that the test of responsibility laid down in the century-old McNaghten Rules is hopelessly outdated and in need of change. But like many experts who have looked into the problem, the members of the Commission had difficulty in agreeing on a satisfactory alternative. Their Report merely pointed to two choices for reform. One would be to keep the Rules but extend their scope to include consideration not only of whether the accused knew right from wrong when he acted, but also whether he was incapable of preventing himself from committing the act. The Commission put forward this recommendation on the assumption that there would be strong resistance to the complete abrogation of the McNaghten Rules. All but three of the members,[24] however, went on record as preferring a second course: abandoning the Rules entirely and replacing them with an amendment that would leave it to the jury to determine if at the time of the act the accused was 'suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible'.

3. GENERAL PROPOSALS FOR AMENDING THE LAW OF MURDER

The first two categories of recommendations dealt with fairly specific questions of the criminal law, and most of the proposals made by the Commission had been part of the currency of legal reformers for some years. Important as they may have been, they did not come to grips with the problem that the Royal Commission had set at the centre of its deliberations: whether the limit on the use of the death penalty effected by the Royal Prerogative of Mercy could be worked more satisfactorily in some other way.

On this question the Commission's chief findings were three:

(*a*) They concluded that it would be impractical to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other aspects.

(*b*) They also rejected as impractical the many proposals put forward for limiting the scope of capital punishment by dividing murder into degrees. To introduce degrees of murder would, in their opinion, not allow the necessary flexibility required in judging a crime so widely varying in culpability.

(*c*) They recommended that the jury be empowered to decide in each case whether punishment by imprisonment for life can properly be substituted for the death penalty. Under this change, the jury would be asked to weigh two different types of evidence: whether the accused was guilty of murder and, if so, whether there were extenuating circumstances that would permit the substitution

of life imprisonment for hanging. The Commission found this method to have worked well in the countries where it had been adopted, and it saw no genuine obstacles to introducing it into Britain. Having canvassed a wide range of alternatives, the Commission came to see in this idea of jury discretion 'the only practicable way of enabling the courts, instead of the Executive, to take account of extenuating circumstances so as to correct the rigidity which is the outstanding defect of the existing law'.

Undoubtedly the members of the Commission recognized that this last proposal, the most original and radical of all, was bound to come under heavy attack when it was submitted. In two revealing sentences (which were to be seized upon and quoted often in later debate), they laid bare their basic dilemma.

> We recognize that the disadvantages of a system of 'jury discretion' may be thought to outweigh its merits. If this view were to prevail, the conclusion would seem to be inescapable that in this country a stage has been reached where little more can be done effectively to limit the liability to suffer the death penalty, and that the issue is now whether capital punishment should be retained or abolished.[25]

This is the closest the Royal Commission came to allowing the uninvited guest to take his place at the head of the council table.

Immediate public response to the report of the Gowers Commission was varied. As expected, the several suggestions for change, as well as the general tone of the Report, roused strong comment in the press, among interested groups, and in Parliament. The Government had no shortage of advice on what to do with the Commission's recommendations. The mass circulation press responded by playing upon two themes. One was its amazement over the lengths to which the Royal Commission had gone in approaching the forbidden question of the merits of capital punishment. The other was its disapproval of the proposal to allow juries the power to recommend the proper sentence in each conviction. The widely-read columnist Cassandra told *Daily Mirror* readers 'The Noose Is Passed to You' in minatory two-inch letters, and the *News of the World* asked its millions, 'Would *you* like to be responsible for deciding whether a fellow creature should live or die?' (as if juries at the time had no part in such a decision already). The popular press generally ignored the remainder of the Commission's proposals, perhaps because they were too technical or insufficiently dramatic for their readers.

Fuller treatment of these topics was given in the more serious organs of the press. Each of them read a slightly different emphasis

into the Gowers Report. *The Times,* for instance, was reassured by what it took to be the Commission's broad approval of the nation's judicial and penal systems, 'assuming our conscience is at peace about retaining the gallows at all'. It approved some of the specific proposals but rejected as unwarranted the Commission's attempt to escape rigidity by allowing juries discretion in sentencing.

If a punishment is to be accepted as just [stated one editorial], it must be founded upon standards consistently applied. A judge or the Home Secretary possesses such standards, a random collection of 12 people brought together for one occasion only cannot acquire them. Parliament can scarcely permit a man's life or death to depend upon the chance predominance of harsh or indulgent temperaments on a particular jury.[26]

In a later editorial, *The Times* found support for its position in the doctrine of ministerial responsibility.

At bottom the decision to hand or to spare is not the less an act of policy because it is applied only to an individual case, and it ought to be taken by a Minister responsible for policy to Parliament and not by a chance-met company of men and women who cannot be responsible to anyone, because as a body they have ceased to exist.[27]

The Commission's recommendations were not wholly unsupported in the press, however. The *New Statesman and Nation,* while disappointed that the Commission had rejected a new definition of murder and had not advocated the Scottish doctrine of 'diminished responsibility', nevertheless saw in the jury discretion proposal 'the one real attempt to satisfy a genuine public demand for some kind of modification'.[28] Unlike *The Times,* the *New Statesman* found between the lines of the Report a call to action on the capital punishment issue itself. The view hinted at was put bluntly by the editors of the *Economist*:[29]

For all the long labours of the Royal Commission and its desire to provide a solution within its terms of reference, its Report can lead to only one conclusion: capital punishment should be abolished and all the anomalies—and perhaps the injustices—that the Commission is trying to prevent will disappear as well.

Reactions from organizations connected with the treatment of criminals were equally mixed, though fairly mild. Even among traditional supporters of the *status quo* there was a tendency to

stress flexibility and moderation. An official of the Prison Officers' Association, for example, was quoted as opposed to the jury discretion proposal but in favour of the general idea of two degrees of murder, only one of them to be punishable by death.[30] A spokesman for the Police Federation of England and Wales, while admitting that the Commission's recommendations did not follow the lines of the evidence submitted by his organization, felt that they were near enough not to cause any undue concern among the police; and contrary to the announced view of the prison officers, he did not think that giving a jury the power to decide if a man should be hanged was very different from the existing possibility of bringing in a verdict of guilt with recommendation to mercy.[31]

The chief abolitionist group, the Howard League, naturally could muster very little enthusiasm over any recommendations short of a proposal to end the death penalty itself. No one liked jury discretion much, and there were some divisions among the membership over several other provisions, but after meetings of both the 'death penalty sub-committee' and the general membership, the League finally came out in support of the Royal Commission's Report and promised to press for the implementation of its proposals.[32] Even in the case of the unpopular jury discretion proposal, members were urged to accept the idea chiefly because 'there seemed little evidence that any attention was to be paid to the Report, and if the Howard League was hostile to one of the main recommendations it might make it even more likely that the authorities would shelve the whole Report and we should lose it altogether'.[33] To the Howard League the outstanding feature of the Report, however, was that its appearance offered an opportunity for reopening the capital punishment debate. The League was eager to stir public and Parliamentary activity, and on the day Parliament reassembled in the autumn of 1953, the League held a public Meeting at Friends House dealing with the legal and moral aspect of the Gowers Report. It placed articles in two national and 12 provincial newspapers and arranged a talk on the BBC by Lord Templewood and a debate on the subject between Hugh Klare, its secretary, and Lord Hailsham.[34] Abolitionists fondly hoped that an aroused public would force quick Government action on the Royal Commission's recommendations and with it renewed attention to the larger question of the role of capital punishment.

Despite the sniping of abolitionist M.P.s, the Churchill Government was extremely slow in revealing what its intentions were regarding the Gowers proposals. Question after question was set down by Labour and Liberal M.P.s to force the Government to speed up its decision and give Parliament a chance to debate the Report. The Government remained unmoved and always found

some reason to postpone that day. Actually a full 16 months elapsed before the Government deemed the moment ripe for a full debate of the subject. In the interval there was more than enough time to see how the Gowers recommendations were being received by the public, particularly by individuals and groups from which the Government took its cues on penal matters. Although the Government provided no time for testing the Commons' opinion until February 1955, it surely took note of a debate on one of the Commission's proposals that occurred in the House of Lords late in 1953—an occasion that provided a preview of things to come.[35]

The Lords' debate came on a motion by Viscount Simon to register the House's opinion against the jury discretion proposal. In the short discussion that followed, nine members of the Lords—including three former Home Secretaries, a former Lord Chancellor, the Lord Chief Justice, and a bishop—supported the motion. The motion's backers questioned the Commission's premise that the law of murder needed to be made more flexible; they registered their confidence in the present workings of the Prerogative of Mercy; and they termed the jury discretion idea capricious and unworkable. Their views were expressed succinctly by Viscount Samuel:[36]

> Why should we take twelve ordinary people, who know nothing, or very little, of the law; and know nothing about psychiatry, insanity and the motives that move people, who have none of the information . . . which the Home Secretary has before him . . . but who come, all of a sudden, to this problem for the first time, and place on their shoulders this dread obligation.

Furthermore, several of the Lords saw in the Royal Commission's activities a devious attempt to bring in abolition by a side wind. In the words of Lord Asquith of Bishopstone, 'One cannot resist the suspicion that the real aim of these proposals is to undermine the death penalty altogether . . . to whittle it down to nothing by indirect means'.[37]

The two abolitionist peers who took part in the debate (Lords Templewood and Chorley) were neither overwhelmingly fond of the jury discretion proposal, but each was willing to see it tried experimentally, since it seemed to be working successfully in other countries. Lord Chorley broke new ground by calling into question the value of the Home Secretary's prerogative, mainly on the ground that as the minister responsible for the conduct of all police officials, the Home Secretary was really an interested party and not always capable of impartiality in the exercise of the prerogative. To give the jury added powers over the sentencing of a convicted

murderer, Lord Chorley argued, would have the salutary effect of taking basically judicial power from the executive and putting it back into the courts.

At the end of the debate, as anticipated, Lord Simon withdrew his 'trial balloon' motion and obviated the need for a division of the House. The debate had served its purpose, none the less. It gave the Government the benefit of informed opinion on the most spectacular of the Royal Commission's recommendations (in a chamber where the Government did not face the danger of having the entire capital punishment question opened up), and it showed that on questions of crime and punishment opinion in the Lords had undergone no major transformation since the earlier controversy over the Criminal Justice Act. The Lords still seemed quite unwilling to accept the basic changes in the law of murder.

It would be unwise to make too much of the immediate impact of the Royal Commission's findings. Undeniably in the short run they evoked almost no sympathetic response from Britain's opinion leaders and, as will be shown later, they were almost completely ineffectual in moving the Government to change either the law or the penal administration. If a Royal Commission is to be judged by the extent to which its recommendations are quickly adopted as official policy, the Gowers Commission must be termed a failure. But if such a body is to be judged by other, more subtle standards, this particular Commission looms larger and takes on importance as an element in the process by which British opinion on the value of capital punishment was changed. By its very existence—and, one might add, in spite of its terms of reference—the Gowers Commission helped keep alive public interest in one of the seminal questions of the state's approach to crime and punishment. Its chief recommendations were for change, and by forcing the Government to consider the consequences of revising the law of murder the Commission helped ensure a revival of the time-worn controversy that had been in cold storage for five years. Finally, simply by amassing a body of data in the way they did, the Gowers Commission provided a treasure chest into which abolitionists could dip freely and hopefully in preparing for a resurgence of Parliamentary interest.

Yet it was quite likely that the activities of the Royal Commission on Capital Punishment would not have been sufficient to excite public or Parliamentary attention in such a way as to bring about changes in basic attitudes. They were not permitted to focus on the central issue, and the questions they did pursue, while intensely interesting to certain segments of the community, were often complex and technical. But when taken in combination with other and quite different developments that occurred at about the

same time in recent history, the Commission's activities helped prepare the ground for a revival of the crusade for abolition.

NOTES

[1] *Government By Committee* (Oxford, 1955), pp. 88-93.

[2] Professor Wheare's comment that in this case 'the division of opinion within the parties meant that delay would be appreciated by both sides' (*ibid.*, p. 90) is a little strange, given the near-unanimity of Conservative sentiment in the votes of 1948.

[3] *Ibid.*, pp. 90-91. Speaking at South Shields, Home Secretary Ede reiterated his view that until solutions to the problem of the life sentence was found, public opinion would never tolerate abolition. *The Times*, November 22, 1948. To the officers of the Howard League, this was merely an excuse to put the main issue into cold storage. Letter to *The Times*, January 28, 1949.

[4] Wheare, *op. cit.*, p. 92.

[5] 156 (January 29, 1949), p. 195. The Government's choice of terms of reference was more sympathetically received by the mildly abolitionist Press. See *The Times* leader for November 19, 1948, and the *Spectator*, 182 (January 28, 1949), p. 103.

[6] Letter to *The Times*, January 28, 1949. They added: 'On that basis we should never have had the Cadogan Committee on Corporal Punishment, for its unanimity was a surprise. We should not have had the great Royal Commission whose minority report led to the recent abolition of the Poor Law. Why the worship of unanimity? The old Kingdom of Poland died of it.' Attlee's statement can be found in 460 *H. C. Debs.* 329-331 (January 20, 1949).

[7] Ede had announced on April 16, 1948, that 'in view of the prospect of the law being amended during the current Session, it will be my duty during the interim period to advise His Majesty to commute death sentences, by means of conditional pardons, to sentences of penal servitude for life.' 449 *H. C. Debs.* 1307.

[8] Several of the partisans of the devil theory found the explanation for this hardened attitude in the replacement of Sir Alexander Maxwell as Permanent Secretary to the Home Office by Sir Frank Newsam just before these cases came before the Home Secretary for review.

[9] Except for the inordinately long time it took the Government to find a suitable chairman and commission members. The appointment of the Royal Commission was announced in November, 1948, but the commission was not completed until late April of the following year.

[10] From 1920 to 1927, Sir Ernest was Permanent Under-Secretary for Mines. Afterwards he served as Chairman of the Board of Inland Revenue, of the Coal Mines Reorganization Commission and the Coal Commission, and of the Harlow New Town Corporation. Among the many committees on which he served as chairman were the committee to inquire into the admission of women to the foreign service, the committee of inquiry into the closing hours of shops, the Committee on the Preservation of Historic Houses, and the Committee on Health, Welfare and Safety in Non-Industrial Employment.

[11] They were Earl Peel, Lord Lieutenant of Lancashire (who resigned in 1950); Sir Alexander Maxwell (former Permanent Under-Secretary to the Home Office and one-time chairman of the Prison Committee); William (later Sir William) Jones, Clerk of the Denbighshire County Council;

Florence (later Dame Florence) Hancock, Vice-Chairman of the Trades Union Congress; Mrs. Elizabeth Cameron (Elizabeth Bowen, the novelist); John Mann, Convener of the Lanarkshire County Council; Norman Fox-Andrews, K.C., Recorder of Bournemouth; Horace Macdonald, member of the executive committee of the Working Men's College; G. A. Montgomery, Professor of Scots Law, University of Edinburgh; Leon Radzinowicz, Professor of Criminal Law at Cambridge and author of the definitive study of the development of English criminal law; and Dr. E. T. O. Slater, a well-known psychiatrist.

[12] A notable exception was the Bar Council, which judged the subject matter of the inquiry to be a question of personal belief and thus refused to send an official spokesman.

[13] Ten witnesses chose to give evidence either wholly or partially in private, but the evidence of eight of them was afterwards published with their permission.

[14] A complete list of witnesses can be found in the *Report of the Royal Commission on Capital Punishment* 1949-1953, Cmd. 8932 (1953), pp. 289-296.

[15] 'In practice the Royal Commission, in taking evidence, has given a wide interpretation to its terms; the Executive found no difficulty in making its general position clear without overstepping the limits imposed.' *Annual Report of the Howard League for* 1949-50, p. 3.

[16] For a discussion of this problem see James B. Christoph, 'Political Rights and Administrative Impartiality in the British Civil Service,' 51 *American Political Science Review* (March, 1957), pp. 67-87.

[17] 8 *Howard Journal* (1949-50), pp. 1-2.

[18] C. H. Rolph has described the way in which he believed, from personal experience, the police federation collected its evidence.

'One day a week, all members of a police division go to the station to draw their pay.

'Their representative on the Police Federation . . . goes along the line as they stand in the queue at the pay-table with a numerical roll-call clipped to a piece of board.

'He nudges each man twice because the first nudge is taken to mean that he is collecting for some charity.

' "Are you in favour of capital punishment, George?"

' "Capital what? What's this, then? Oh, yes, hang the lot, chum." '

Reynold's News, July 15, 1956.

[19] Letter from Cicely Craven, Secretary of the Howard League, in 39 *New Statesman and Nation* (February 11, 1950), p. 161.

[20] 'We are putting in a completely discreet paragraph . . . saying that we know that there are Governors and others who hold views diametrically opposed to those expressed by the officials giving evidence, that we know of at least one who hesitated for long about entering the service because of some of the repressive features of the prisons and capital punishment. That means you . . . We ought to be able to offer the names in private to the Commission if we are asked for them. May we give yours?' Cicely Craven to a prison official, December 29, 1949. Howard League files.

[21] Cmd. 8932. A summary of the findings can be found on pp. 274-283 of the *Report,* and in *The Times* for September 24, 1953.

[22] *Report of the Royal Commission,* p. 274 (author's italics).

[23] For a discussion of this doctrine, see p. 24 above.

[24] Dame Florence Hancock, Mr. Macdonald, and Professor Radzinowicz.

[25] *Report,* p. 278.

[26] *The Times,* September 24, 1953.
[27] 'Jury Discretion,' December 16, 1953.
[28] 'New Deal for the Hangman,' 46 *New Statesman and Nation* (October 3, 1953), pp. 364-365.
[29] 168 (September 26, 1953), p. 834.
[30] *The Times,* September 24, 1953.
[31] *Ibid.*
[32] *Annual Report of the Howard League for* 1953-54, pp. 4-5. There was uneasiness in some quarters, however. 'Some may fear that if the Report were accepted and its recommendations became operative, or if a progressive Home Secretary acted . . . in the spirit of the Report when reprieves have to be considered, we might find the country with a quieted conscience about the dangers of the death penalty; and so, though more limited in use, the penalty would be more firmly intrenched.' 9 *Howard Journal* (1954), p. 6.
[33] Letter of Hugh Klare to Miss Clemence Paine, January 26, 1954, Howard League files.
[34] *Annual Report of the Howard League for* 1953-54, p. 5. See also Klare's letter to *The Times,* December 19, 1953.
[35] 185 *H. L. Debs.* 137-188 (December 16, 1953). For a critique of the debates see *The Economist,* 169 (December 26, 1953), p. 949.
[36] 185 *H. L. Debs.,* 183.
[37] *Ibid.,* 174.

CHAPTER 4

CAPITAL PUNISHMENT IN THE COURTROOM

THE mood change that occurred between 1948 and 1956 was stimulated not only at the lofty level of a Royal Commission but in the courtroom and mass press as well. The activities of the Gowers Commission, thorough as they may have been, could not have kept popular or Parliamentary attention focused on the question of capital punishment for long had not other events added a sense of urgency and vivid human interest to the debate that previously had raged mainly at the level of blue books and white papers. What gave the debate its uniquely compelling flavour was the impact of a handful of highly publicized murder cases in the early 'fifties. Possibly more than any other factor, it was these cases that led to increased uneasiness among supporters of hanging and their previously indifferent allies in the public.

Commentators have long noted the special fascination with murder cases that exists in countries, such as Britain, which impose the supreme penalty. Over a century ago Dickens wrote that 'Around capital punishment there lingers a fascination urging the weak and bad people toward it, and imparting an interest to the details connected with it, and with malefactors awaiting it or suffering it, which even good and well-disposed people cannot withstand'.[1] Now, long after the abolition of public executions and accompanying ceremonies, popular interest in all stages of the process remains high. Murder, along with sex, sport, and the idiosyncracies of high society, forms the mainstay of the journalism catering to the overwhelming majority of British readers. This is not the place to argue the question of whether this penchant for sensationalism should be attributed to the press or to the tastes of its readers. The fascination is there; it increases as the crimes reported become more violent; and it is perhaps greatest in the case of murder, especially if the murder is brutal and heinous, or if the murderer is an unusually colourful person. The fact that a man may be sentenced to lose his life in a ritual known to all Britons imparts to murder trials a dramatic quality that is lacking in most countries where a life sentence is the heaviest possible punishment. In the words of Christopher Hollis, 'Readers like the tension of a battle for the ultimate of all stakes'.[2]

Naturally neither the abolitionists nor the retentionists can do much to control the kind of murders that take place in British society. No abolitionist would consider killing someone simply to prove that the existence of capital punishment failed to deter him from the act. There is, then, one important influence on the controversy that is almost accidental in character: the frequency and circumstances of the crime itself. It may happen, as it did in 1948 between the first votes in the House of Commons and the House of Lords, that several particularly grisly murders (such as the slaying of a policeman and the rape-murder of a young woman who was disposed of at sea through a porthole) will occur and monopolize the front pages. Several American states, after going years without the death penalty, reintroduced it hurriedly following one or a series of notably vicious and highly-publicized murder cases. It is, of course, true that the press, which in Britain and the United States has been generally favourable to retaining capital punishment, may by selection and emphasis play up one type of murder case and ignore or play down another to suit its predilections. But the fact remains that newspapermen are seldom known to initiate the crimes themselves, and if the murder has some of the classic ingredients it is likely to be given plenty of space, regardless of its effect on the larger policy issues.

If most of the murder cases of 1947 and 1948 seemed to reinforce the pro-capital punishment dispositions of the majority of Britons, the crimes of the early 1950's were more a mixed bag; and notable among them were several cases which, either because of the nature of the crime itself or the subsequent treatment of persons arraigned for it, shocked sensitivities and raised in diverse quarters serious doubts over the character of British justice. Abolitionists had long argued that under a capital punishment system the possibility always existed that an innocent person might be convicted and hanged, whereas under alternate punishments the mistake could be rectified. The usual answer of the defenders of capital punishment has been that granted such a thing might have occurred once or twice in the eighteenth and nineteenth centuries, today with the elaborate safeguards taken by police, courts and the Home Secretary such error is no longer conceivable. Typical of this view were the following remarks offered during the Commons debate of April 14, 1948:

> The risk, under the conditions as they exist in this country, of capital punishment being executed on any one who was not in fact guilty of the crime of which he had been convicted is so small, indeed so infinitesimal, that the consideration can be dismissed.[3]

As a realist I do not believe that the chances of error in a murder case, with these various instruments of the State present, constitute

a factor which we must consider . . . There is no practical possibility . . . The honourable and learned member is moving in a realm of fantasy when he makes that suggestion.[4]

In the following year top officials of the Home Office expressed similar views in testimony before the Gowers Commission. With such soothing statements coming from experienced lawyers and administrators, it was clear to the abolitionists that to make their point effectively they would have to produce examples of injustice more recent than the hoary tales from the courts of Queen Victoria.

In any year there are likely to be a few unusual murder cases that arouse some concern among lawyers, politicians, reform groups, or even the general public over whether or not a mistake has been made. Most of these cases fail to stir up widespread interest, however, and they are quickly forgotten. It was by a combination of accident and human miscalculation that between the years 1952 and 1955 there occurred three especially noteworthy cases, the combined and cumulative impact of which was to throw into serious doubt the traditional treatment of convicted murderers. The present writer is not competent to judge whether the protagonists in these cases were guilty or innocent, or justly or unjustly punished. What is important is that a large and influential portion of the British population convinced itself that these persons were victims of circumstances that would have developed quite differently except for the presence of the hangman.

THE CASE OF BENTLEY AND CRAIG[5]

On November 3, 1952 a London policeman was killed in a gun-battle while attempting to apprehend two youths who had broken into a warehouse. The youths were Christopher Craig, aged 16, and Derek Bentley, aged 19. There was never any doubt that the shot that killed the constable was fired by Craig, or that it was fired a full fifteen minutes after his accomplice Bentley had been taken into custody by another policeman. At their trial both youths were found guilty of murder. Because he was under the legal age for hanging (18), Craig was sentenced to life imprisonment. But the nineteen-year-old Bentley was condemned to die and, following the refusal of Home Secretary Sir David Maxwell Fyfe to grant a reprieve, was hanged for murder early in 1953.

The Bentley-Craig case was a strange one in several respects. It involved the often-criticized point of law known as constructive malice, whereby a party to a common purpose must assume common responsibility for anything that occurs in the course of pursuing that purpose. Thus in this case a person who did not fire the fatal shot and had been in the hands of the police for a quarter of an hour before that moment was none the less hanged for the crime.

Bentley was the object of widespread pity. He had been rejected by the armed forces as a Grade 4 Mentally Deficient and was, if not feeble-minded, a decidedly borderline case. He was just barely over the minimum legal age for hanging. He demolished his own defence in the Court of Appeal by a simpering answer given under cross-examination that was contrary to the whole of the rest of the evidence, mainly in his favour, given by the police officers involved. He was party to a case in which the actual perpetrator of the crime received the lighter sentence while he, as the junior and relatively passive partner, was forced to undergo the severest penalty known to English law.[6] Finally, it should be noted that the jury that found him guilty recommended mercy for him, a recommendation apparently approved by the presiding judge. Taken singly, almost any of these factors conceivably might have provided the rationale for the use of the Royal Prerogative by the Home Secretary. Taken together, they were sufficient to convince many persons that, except for the fact that the victim had been a policeman, Bentley would have been reprieved as a matter of course.

The decision that Bentley should hang came as a surprise and shock to many Britons and brought forth fierce indignation. 'Seldom,' wrote the *Howard Journal*, 'has any execution caused so much controversy and public concern or such scenes of public emotion, inside Parliament and out, or so much criticism of a Home Secretary for refusing a reprieve.'[7] A writer in the *Picture Post* characterized the pitch of public sentiment as similar to that which had overcome the country at the time of Dunkirk and at the death of King George VI. The case was thoroughly aired in the press, many of whose organs took the opportunity to renew their appeal for more attention to the question of capital punishment.[8] In the House of Commons, Sydney Silverman raised the matter and attempted to move the adjournment of the House in order to permit debate on the Home Secretary's decision. The effort was quashed by the Speaker, who invoked the quaint tradition that a death sentence could not be discussed until it had been carried out.[9] A motion, signed by over two hundred MPs, urging the Home Secretary to reconsider, was placed on the Order Paper, and the usual petitions began to roll in. This was followed up by a deputation of Labour Members, led by Aneurin Bevan and a former Solicitor-General, who saw Home Secretary Maxwell Fyfe in private. All was unavailing. The Home Secretary remained adamant, and Derek Bentley was duly executed in Wandsworth Prison as a crowd, half angry, half curious, milled outside its gate waiting for the inevitable notice to be posted.

While it was true that the Bentley case was a complex one, involving legal issues not normally raised by abolitionists, its

consequences for the then dormant abolitionist movement were considerable. It brought into relief many of the kinds of questions abolitionists wanted raised, and it cast grave doubts upon the easy assurances that had been given in 1948 concerning the use of the Home Secretary's reprieve power. Once again there was public uneasiness over the condition of the law of murder. Whether or not this mood would have been soon replaced by interest in other events is difficult to say, for less than six months after the hanging of Bentley another, and even stranger, murder case drew the attention of the British public back to the question of the consequences of capital punishment.

THE EVANS-CHRISTIE CASES

Few murder cases of the twentieth century will be able to exceed in mystery and notoriety the cases of Timothy John Evans and John Reginald Halliday Christie. Certainly few cases served to direct public attention more dramatically to the place of capital punishment in a society traditionally proud of its system of legal justice. The Evans-Christie story is so complex and confused, and has been related so often, that it is necessary here only to stress certain salient features.[10] No attempt will be made to cast new light on the facts of the cases, to put forth new theories of guilt or innocence, or to explain the behaviour of government officials. The reader may rightly resist yet another foray into this intriguing but bottomless pit. For our purpose it is the response to the cases that merits the most attention.

The facts of the two cases are not clear or easily established. On November 30, 1949, a young labourer named Timothy John Evans went to the police in Merthyr Tydfil, Wales, and announced that he had 'disposed of' his wife down a drain near their home in London. In the course of the next several days, at Merthyr Tydfil and at Notting Hill Police Station, Evans made no fewer than three statements to the police concerning his actions, each of them in some way contradicting the others. Upon investigation, the police found the body of Mrs Evans not down a drain but concealed, along with the body of Evans' baby daughter, in a tiny washhouse behind the house in North Kensington where the Evanses had their flat. The Evanses occupied the first floor of the house; the ground floor was occupied by Mr and Mrs John Halliday Christie. In one of his several statements, Evans insisted Christie rather than he had killed Mrs Evans, but when confronted with the clothes of the two dead persons and the instruments of their murder, he confessed that he had killed them both and put their bodies in the washhouse while the Christies were asleep.

On the basis of this later statement the prosecution made its case against Evans, and Christie obligingly served as the state's chief witness. Evans was arraigned for the murder of his child, obviously because, unlike in his relations with his wife, he could hardly claim provocation. At the trial, he reverted to his earlier statement in which he accused Christie of killing Mrs Evans while attempting an abortion on her. In contrast to Christie, who as a former policeman was an accomplished witness, Evans, an illiterate, scared, and cowardly man, fumbled and stumbled and proved his own worst witness. Two police inspectors to whom Evans had made confessions gave contradictory evidence concerning how much information about the murders Evans had been given before he confessed, but apparently this had no impact on the outcome of the trial. Evans was found guilty of murdering his child, was refused a reprieve by Home Secretary Chuter Ede, and was hanged on March 9, 1950.

The Evans case was humdrum and drew neither headlines nor attention at the time. Given the facts that came out during the trial, few observers were willing to cavil with the Home Secretary's judgment that this was an open-and-shut case. Three years later, however, the bodies of six women were discovered in Christie's flat and backyard, and Britain had a mass murderer on its hands. One of them was Christie's wife, who had been the second witness for the prosecution at the Evans trial. Christie was quickly arrested and confessed to having strangled his wife and the other five women. He also admitted that he had strangled Mrs Evans but denied murdering the Evans baby, for whose murder Evans was hanged. With the exception of his wife's, Christie confessed that he had committed the murders for sexual purposes. He pleaded guilty but insane at the trial, but was found guilty and sane by the jury, and was given the death sentence on June 25, 1953.

Christie's confession naturally led to the unearthing of the Evans case and caused widespread curiosity and disquiet about the earlier crime. At the Evans trial it was assumed by all parties that the two murders had been committed by the same person, and no evidence to the contrary was introduced. Now, three years after the hanging of Evans, the public was being asked to accept a series of rather improbable coincidences. For if Evans really had killed his wife and child, and Christie had killed the other six women whose bodies were found on the same premises, it meant that:

1. In November, 1949, a house in North Kensington was occupied by two murderers, the only men in the house. Neither knew the other to be a murderer.
2. Both murderers were stranglers of women.
3. Both used a ligature for strangling, not their bare hands.

4. Both removed the rope from around their victims' necks.
5. Both tied up their victims' bodies in blankets.
6. Both used the washhouse as a depository for their victims.
7. Both doubled up their victims after death.
8. Both sold their dead wives' rings.
9. Both kept newspaper cuttings of murder cases. (Cuttings of the Setty case were found in the illiterate Evans' flat, and a cutting of the Evans case was found on Christie on his arrest.)[11]

This series of coincidences, and others that were pointed out in Parliament and in the press, stimulated public anxiety over the possibility of a miscarriage of justice in the case of Evans. A Labour M.P., George Rogers (who represented the constituency in which both Christie and Evans' mother lived), started a private investigation. The secretary of the Howard League wrote to the Home Secretary urging a public inquiry into the Evans case in view of Christie's confession, and the letter was widely reported in the press. Demands for an inquiry were made in Parliament. Sydney Silverman and eleven other members vainly attempted to introduce under the Ten Minute Rule a bill to suspend capital punishment for five years.[12] Early in July, 1953, in response to these pressures, Home Secretary Sir David Maxwell Fyfe appointed Mr John Scott Henderson, Q.C., to hold an inquiry into both the Evans and Christie cases and to report whether, in his opinion, 'there is any ground for thinking that there may have been any miscarriage of justice in the conviction of Evans for the murder of Geraldine Evans'. The inquiry was to begin immediately, to be held in private, and to take place before the sentence of death was to be carried out on Christie.

Undoubtedly the appointment of Scott Henderson was made in the hope that his findings would not only clear the government of all suspicion but also that they would still the rising tide of abolitionist feeling that was developing because of these cases. Because the Home Secretary did not want to have Christie kept too long awaiting his fate, the inquiry was carried out in a remarkably short time—a single week. With passions and suspicion already aroused, it would have been miraculous had the Scott Henderson Report[13] been received sympathetically on all sides. It turned out to be a complete exoneration of the official conduct of the Evans case, as indicated in Scott Henderson's conclusions:

1. The case for the Prosecution against Evans as presented to the jury at his trial was an overwhelming one.
2. Having considered all the material now available relating to the deaths of Mrs. Evans and Geraldine Evans, I am satisfied that there can be no doubt that Evans was responsible for both.

3. Christie's statements that he was responsible for the death of Mrs Evans were not only unreliable but were untrue.

The day following the release of the report Christie was hanged in Pentonville Prison.

Two weeks later Parliament found time to debate the Scott Henderson Report, although at the time the inquiry was being held various members registered their concern over the speed with which the affair was proceeding, as well as the Home Secretary's decision to hold private rather than public hearings.[14] The full debate was dominated by a group of left-wing Labour abolitionists—Messrs Bing, Foot, Silverman, and Bevan—who accused the Home Secretary of having made it impossible for a fair verdict by setting a rigid deadline and by refusing a public inquiry in which the lawyers hired to assert Evans' innocence would be allowed to challenge the evidence brought forward against their dead client.[15] They further accused Scott Henderson of having failed to examine new evidence that had come out after Evans' trial in 1950, and of having conducted the inquiry in such a way that Christie was informed by an assistant before his interview with Scott Henderson that there was still no proof that he had murdered the Evans infant—a story Christie stuck to in his final interview with Scott Henderson.[16] In reply, Home Secretary Maxwell Fyfe insisted that a week was a sufficient and humane period for the inquiry, and that secret meetings were preferable to public ones because they gave 'ordinary people who do not want to be mixed up in dreadful affairs' more incentive to come forward, as well as more flexibility for the tribunal to follow up new paths. Maxwell Fyfe found not a scintilla of evidence to support the Opposition's attack on the motives and methods of Scott Henderson, and he was content in his view that justice had been done.[17]

Nevertheless, the impression could not be erased that the inquiry was a whitewash. Sydney Silverman put his finger on the reason for some of the disquiet when he pointed out that it was a serious embarrassment that the same minister should be responsible to the House of Commons for this inquiry while at the same time bound by his office to defend his subordinates, the officers concerned in the original investigations, the original trial and the subsequent apprehension and trial of Christie. The real lesson of these tragic events, Silverman argued, was that Britain needed a Ministry of Justice headed by a person responsible for the administration of justice but not responsible for the conduct of the police force.[18] Some misgivings may have been laid to rest by the results of the Scott Henderson inquiry, but others were stimulated, particularly the nagging feeling that the truth could never be known because one

protagonist in the events had met the hangman three years earlier.

These two strange cases were before Parliament and the public in one way or another almost daily during the spring and summer of 1953, and the questions raised by them were already familiar when the Royal Commission issued its report in the autumn. In this and the succeeding three years several books appeared to assert Evans' innocence and catalogue the misdeeds of the government officials involved in the cases: *Hanged—and Innocent?* (1953) by R. T. Paget and Sydney Silverman, *The Man on Your Conscience* (1955) by Michael Eddowes, and *The Case of Timothy Evans* (1956) by Lord Altrincham, editor of the *National and English Review*, and Ian Gilmour, editor of the *Spectator*. None of them was a best seller, but each received extensive comment in the press and served to keep the facts and the allegations of the Evans-Christie saga before the public. From 1953 onwards, no debate on capital punishment in either House of Parliament was complete without reference to the fate of Timothy John Evans.

The abolitionists were able to make capital of this controversy for three reasons. First, Christie was a good example of how the death penalty does not deter murder. A man who had taken part in the trial of a neighbour who was subsequently hanged went on to murder four other women. Second, had capital punishment not existed in Britain, a much different outcome to the trials of Evans and Christie might have resulted, especially in the light of the additional information that was obtained after Evans' execution in 1950. People were left with a gnawing question: What would have happened to Evans had he been alive in prison when Christie's six victims were unearthed? Finally, many persons, some of them powerful and influential, were moved by the revelations of 1953 to reconsider their own commitment to retaining capital punishment. This shift of opinion will be examined in the next chapter. But the importance of the Evans case in this respect was underlined by Mr Chuter Ede in his words to the House of Commons in 1955:

> If those facts [about Christie] had been known to the jury at the time, they might perhaps have found Evans guilty of murder in conjunction with Christie; I doubt whether they could have found Evans guilty of murder in any other circumstances. I was the Home Secretary who wrote on Evans' papers, 'The law must take its course . . .' I think Evans' case shows, in spite of all that has been done since, that a mistake was possible, and that, in the form in which the verdict was actually given on a particular case, a mistake was made.[19]

We probably never will know the extent of Evans' guilt or innocence. But the events of the middle 1950's took the course they

did in part because the Evans murder case became an effective popular symbol.

THE ELLIS CASE

The Bentley and Evans cases aroused public attention because they involved the suspicion that the convicted person did not commit the crime for which he was sentenced. In the third major case that occasioned a re-examination of capital punishment, the question at issue was not the guilt of the principal party but the appropriateness of the punishment.

On April 28, 1955, an attractive young woman, Mrs Ruth Ellis, waited outside a Hampstead pub for her lover, and when he appeared she fired four shots into him, with fatal effect. In her statement to the police, Mrs Ellis, a divorcee and mother of two children, freely admitted that she intended to kill David Blakely and had done so because of his infidelity and her fear that he was about to leave her. She was charged with murder and on the advice of counsel pleaded not guilty. The defence contended that the crime was committed without malice and under extreme provocation.

The Ellis trial attracted considerable publicity. Several elements of good copy were immediately present—an attractive blonde murderess, sexual motives, a woman on trial for her life—and as the trial proceeded, additional newsworthy items came to light. It was revealed that Mrs Ellis had had two lovers at the same time, one of whom, the murdered Blakely, was anxious to break off the liaison. Mrs Ellis' story was that she had become pregnant in March and, three days before she shot him, had been struck in the abdomen many times by Blakely, causing a miscarriage. A psychiatrist testifying for the defence gave evidence that Mrs Ellis was emotionally hysterical at the time of the crime, which he characterized as a genuine crime of passion in that the killer both loved and hated the victim in a moment of extreme confusion. In spite of these pleas, the presiding judge instructed the jury that the evidence was insufficient to reduce the crime from murder to manslaughter, and on June 22nd Mrs Ellis was found guilty of murder and sentenced to be hanged. It was announced that the judgment would not be appealed, but the solicitors acting for Mrs Ellis issued a statement advising people how to draw up a petition for her reprieve.

By that time the case had captured the public imagination and scores of persons, not all of them abolitionists, began to pen letters, utter protests in public, and circulate petitions urging Home Secretary Gwilym Lloyd George to use the Prerogative of Mercy.[20] A petition bearing more than 2,000 signatures reached the Home Office. In making his decision, the Home Secretary had to weigh the undisputed facts of the case in the light of the character and condi-

tion of Mrs Ellis, the state of public concern, and precedents that only rarely permitted the hanging of a woman.[21] On July July 11th Major Lloyd George decided that Ruth Ellis must hang. At the time he may have been convinced that this was the only course open to him on the basis of Home Office precedents; but in retrospect it seems difficult not to believe that the decision to let Ruth Ellis die was a grievous mistake that haunted Lloyd George and his allies in their later efforts to forestall the abolition of the death penalty.

Last-minute efforts to get the Home Secretary to reverse his decision (such as a further petition from 35 members of the London County Council) were unavailing, and the execution of Ruth Ellis took place on July 13. It was not without disturbance. Police reinforcements had to be sent to Holloway to control a crowd of 500 gathered there the night before the execution. *The Times* reported that one section of the crowd chanted over and over again three names: 'Evans—Bentley—Ellis'.[22] On the morning of the hanging another crowd, estimated at 1,000 persons, gathered at the prison gates, some of them praying, some of them displaying macabre curiosity. As the notices of execution were posted, the crowd rushed forward, blocking the road and halting traffic in order to confirm for themselves the event of 9 a.m.

For a week afterward the press was filled with letters and editorial comment on the significance of the Ellis execution.[23] Powerful as was the concern of some of the routine commentators, perhaps the most poignant and widely-quoted response to the event was contained in a statement issued by a group of teachers who taught in schools near Holloway Prison. One of them wrote,[24]

> Today Ruth Ellis was hanged. Not only myself but many of my colleagues were faced with the effect of this upon the boys and girls we teach.
>
> The school was in a ferment. There were some children who had waited outside the prison gates; some claimed to have seen the execution from their windows; others spoke with a fascinated horror about the techniques of the hanging of a female.
>
> My colleagues and I agree that if there is any argument which weighs above all others for the abolition of capital punishment then it is this dreadful influence it had. For not only was Ruth Ellis hanged today, hundreds of children were a little corrupted.

Irrational as it may seem, the hanging of a woman arouses different passions than in the case of a man. Many Britons apparently were convinced that the circumstances of the action would guarantee a reprieve for Ruth Ellis. When the reprieve did not come, and when the law was permitted to take its course, something like

a wave of distaste followed. Within a month following the enactment of the final scene in Holloway Prison, a group of prominent Englishmen formed a new National Campaign for the Abolition of Capital Punishment in the hope that many of these inchoate feelings might be channeled into a public demand for legislative action.

The Bentley, Evans-Christie, and Ellis cases were by no means the only well-publicized murder cases that occurred in these years. They were, however, cases which in a special way caught the public imagination for more than a moment in time, and they showed the workings of the law of murder to many persons who previously had given scant attention to the question. That several such cases had developed within a relatively short span of time was probably an accident of history. But the manner in which the offenders were treated by the custodians of the law was a matter of official policy, and the officials concerned had to take responsibility for their actions in these cases. It is difficult not to believe that had the several Home Secretaries chosen the other alternatives open to them in each of these cases, the subsequent successes of the abolitionists would not have come about. Finally, it must be remembered that although these murders were spontaneous and uncontrollable, the public image of them was capable of being manufactured. In this period, from a variety of motives, a large number of politicians, publicists, and penal reformers were doing all they could to keep the names of Bentley, Evans, and Ellis well to the fore in any discussion of the criminal law. The abolitionists could do little to create the raw materials; but they could do much to use these specific murders to help draw the total picture they wished to propagate.

NOTES

[1] Quoted by Christopher Hollis in R. T. Paget and Sydney Silverman, *Hanged—and Innocent?* (London, 1953), p. 274.

[2] *Ibid.*, p. 275.

[3] Sir John Anderson, 449 *H. C. Debs.* 1000 (April 14, 1948).

[4] Sir David Maxwell Fyfe, *ibid.*, 1077.

[5] Details of the case can be found in Paget and Silverman, *op. cit.*, pp. 89-110.

[6] 'As far as I have been able to ascertain Bentley is the only man in our legal history who has been executed for a crime in which he was only vicariously responsible, when the principal could not be executed.' *Ibid.*, p. 109.

[7] 8 (1953), p. 227. In accordance with its policy of not criticizing the Home Secretary's actions in individual cases, the Howard League took no official stand on the Bentley affair.

[8] In particular see *The Economist* 166 (January 31, 1953), pp. 266-268, and the *New Statesman and Nation*, 45 (January 31, 1953), pp. 109-110.

[9] 517 *H. C. Debs.* 1897-1905 (July 14, 1953).

[10] For greater detail and more passionate argument, see Paget and Silverman, *op. cit.*, 115-253; Michael Eddowes, *The Man on Your Conscience: An Investigation of the Evans Murder Trial* (London, 1955); and Lord Altrincham and Ian Gilmour, *The Case of Timothy Evans: An Appeal to Reason* (London, n.d.), as well as the Scott Henderson Report of Inquiry, Cmd. 8896 (H.M.S.O.), 1953). Four years after the terminal point of this study yet another book on the case appeared, Ludovic Kennedy's 10 *Rillington Place* (London, 1961), and aroused considerable comment.

[11] These and other coincidences are noted in Eddowes, *op. cit.*, pp. 48-50.

[12] 517 *H. C. Debs.* 409-420 (July 1, 1953). The move was defeated, 256-195, the vote following fairly strict party lines. In opposing it the Attorney-General argued that no urgent new factors in the situation had as yet been discovered, and that it would be better to hold off any major debate on the question until after the Royal Commission had reported.

[13] Cmd. 8896.

[14] The Parliamentary Penal Reform Group passed a resolution declaring how 'profoundly disturbed' it was over this decision, and in a letter to the Home Secretary the secretary of the Howard League complained that the decision made it virtually impossible to make effective representations before Scott Henderson. Hugh Klare to Sir David Maxwell Fyfe, July 7, 1953. Howard League files.

[15] 518 *H. C. Debs.* 1441-1491 (July 29, 1953).

[16] This point is elaborated in Altrincham and Gilmour, *op. cit.*

[17] Apparently stung by some of the accusations made against him in this debate, Mr. Scott Henderson resorted to the rather unusual device of issuing a Supplementary Report to the Home Secretary a month later, in which he answered his critics.

[18] 518 *H. C. Debs.* 1469 (July 29, 1953.

[19] 536 *H. C. Debs.* 2090 (February 19, 1955).

[20] The case was widely discussed in the French Press, whose sensibilities were shocked by the difference between the English and the French treatment of *crimes passionels.* See the report in *The Times* for July 13, 1955.

[21] During the present century less than 10 per cent of women sentenced to death have been hanged. *Report of the Royal Commission on Capital Punishment*, p. 65.

[22] July 13, 1955.

[23] For examples of strongly aroused passion see *The Economist* 176 (July 16, 1955), p. 209, and *The Spectator,* 195 (July 15, 1955), pp. 81-82; (July 22, 1955), pp. 110, 120-121.

[24] Quoted in *The Times,* July 14, 1955.

CHAPTER 5

THE CAMPAIGN RENEWED

For the capital punishment issue the period from 1949 to 1955 was a fairly quiescent interval between major Parliamentary crises. The chief events of this period—the activities of the Royal Commission and the notable murder cases—took place outside Westminster and only indirectly and sporadically affected the mood of Parliament. The tides of public sentiment may have been moving in the direction of abolition, but they were moving rather sluggishly, and their impact upon those who make policy in this area was slight. From the viewpoint of the abolitionists, what had to be created most was a groundswell of public support, effective organization and suitable Parliamentary opportunities. By the end of 1955 the abolitionists believed that events were running in their favour and these conditions now existed and could be turned to their advantage.

That theirs was still an up-hill struggle was clear to the abolitionist leaders. Although they took encouragement from some of the public reaction to the Bentley, Evans-Christie and Ellis cases, they were aware that the majority of Britons still remained staunch supporters of the death penalty. Public opinion polls taken during this period, for instance, showed continued majority support for the retention of capital punishment, despite perceptible movement away from *overwhelming* acceptance of it.

TABLE 1[1]

PERCENTAGE OF PERSONS SUPPORTING VARIOUS POSITIONS ON THE DEATH PENALTY

	Retain	Abolish	Don't Know
October 1953	73	15	12
July 1955	50	37	13
December 1955	61	25	14

Nor was Parliamentary opinion disposed to welcome much change during the life of the 1951 Parliament. Time and again Government spokesmen refused requests that they bring in new legislation affecting capital punishment or give facilities to abolitionist bills proffered by members of the Opposition. For example, the Royal Commission on Capital Punishment reported in 1953, but for over a year no debate took plate on its recommendations, despite a fairly steady barrage of questions laid down by Labour abolitionist M.P.s. Finally, in December, 1954, the Leader of the House of Commons

announced that the Government would find time for a debate on the Commission's findings as soon as Parliament convened in the new year.[2] It was clear also that the Government did not plan to introduce any of the legislation proposed by the Commission but wanted simply a *pro forma* debate which would 'take note of the Royal Commission Report'. A free vote was to be permitted on the government's motion.

The Howard League and certain abolitionist M.P.s might have preferred some less controversial figure than Sydney Silverman to introduce an amendment to the resolution to the effect that the death penalty should be suspended. But when Silverman did introduce such an amendment, all abolitionists supported him.

The Howard League's involvement upon this occasion was guaranteed because it was not only still committed to press for abolition, but also because in spite of reservations it had decided to support the recommendations of the Royal Commission. In the weeks immediately preceding the debate the League got a fairly large number of its members to write their M.P.s, arranged to issue its own unofficial whip through the Secretary of the Parliamentary Labour Party, provided sympathetic—especially moderate—M.P.s with materials and urged them to intervene in the debate, and called a meeting of the Parliamentary Penal Reform Group to hear Sir Ernest Gowers answer questions on the findings of his Royal Commission. Like so many of the League's Parliamentary activities, the campaign—if it can be called that—was a quiet, behind-the-scenes affair, devoid of clamorous emotions and directed chiefly at known supporters and sympathetic waverers. Because two General Elections and nearly seven years separated the last vote on the issue and this impending one, no one could be sure what the results would be.

The Commons debate, which took place on February 10, 1955, followed predictable lines.[3] The Conservative Home Secretary, Major Gwilym Lloyd-George, moved that the House do no more than 'take note of' the recommendations of the Gowers Commission. He rejected all of that group's chief proposals, including jury discretion and a revision of the McNaghten Rules, but promised that the Government would re-examine the remainder of the recommendations in the light of the present debate. He then turned his attention to the Silverman abolition amendment (now bearing the names of three Conservatives as well as three Labour members). In opposing it, Lloyd-George used the three reasons that had been relied upon by Home Secretary Ede in 1948: that (1) capital punishment still serves as an effective deterrent to potential murderers, (2) prolonged imprisonment is not a satisfactory alternative to the death penalty, and (3) there is clearly no overwhelming public sentiment in favour of change. Finally, anticipating the accusation that he had sold out

his previous abolitionist views and had been 'captured' by retentionist forces within his ministry, the Home Secretary explained that the reason he had voted for the Silverman abolition motion in 1948 was that he had been duped into believing that the eminent Prison Commissioner, Sir Alexander Paterson, had been converted to abolition toward the end of his life.[4] Thus Reginald Paget's notorious gaffe provided the present Home Secretary with a convenient explanation for his previous support of abolition.

If Major Lloyd-George, the 1948 abolitionist, now passionately defended capital punishment, the debate brought another notable about-face: the Home Secretary who in 1948 had recourse to these very arguments, Mr Chuter Ede, was now numbered among the death penalty's ardent foes. It was in this debate that Ede publicly admitted that he had erred in signing the death papers of Timothy John Evans. In the most poignant and memorable phase of the debate, Ede offered up his hope 'that no future Home Secretary, while in office or after he has left office, will ever have to feel that although he did his best . . . he sent a man to the gallows who was not "guilty as charged"'.[5]

The remainder of the debate was disappointing, especially to those who had looked forward to an informed examination of the Royal Commission's proposals. Most of the speakers addressed themselves to the time-worn arguments for and against capital punishment, and the Royal Commission's efforts faded farther and farther from sight. The Silverman amendment was rejected in a division, 245-214, and the Government motion subsequently agreed to.

Analysis of the vote reveals that, including tellers, 463 of the 625 House members took part in the division, an unusually high percentage for a free vote. Among those voting for the abolition amendment were 194 Labourites, 17 Conservatives, and 3 Liberals, while numbered among the successful opponents of the amendment were 239 Conservatives, 5 Labourites, and one Liberal. Nearly 160 M.P.s did not vote, chiefly because they were absent from the Chamber; and 90 of them were Labour. Had the absentees been present and voted along the party lines revealed in the actual vote, however, the amendment would still have been defeated. A comparison between this division and the free vote in 1948 on Silverman's original amendment to the Criminal Justice Bill is illuminating:

	1948	1955
Labour		
Abolitionists	215	194
Retentionists	74	5
Conservatives		
Abolitionists	14	17
Retentionists	134	239

Liberal		
Abolitionists	7	3
Retentionists	0	1

These figures reveal two things. First, they confirm the suspicion that despite its supposed non-partisan character, the capital punishment question generally divided Parliament fairly closely along party lines. Labour continued to supply the abolitionists with the bulk of their supporters and had fewer defectors to the 'improper' lobby than did the Conservatives. The second item to be noted is the strengthening of abolitionist support among Labour Members. This comes out pointedly when we examine the behaviour of ex-ministers, who, it will be recalled, were required in 1948 either to vote against the Silverman clause or to abstain on the division. Although several ex-ministers, among them Attlee and Morrison, abstained on the 1955 vote, other former retentionists such as Ede and Isaacs now voted for abolition, as did a large group of former abstainers such as Bevan, Gaitskell, Griffiths, Strachey, Strauss and Younger. Abolitionists learned from this vote that they could now rely upon an almost solid phalanx of supporters on the Labour side of the House. They saw that their chances of success depended upon two possibilities: either that Labour would be returned with a parliamentary majority at the forthcoming General Election, or, if not, that they could induce enough Conservative M.P.s to desert the traditional Tory position on hanging to make up a bipartisan abolitionist majority.

The first possibility was eliminated by the results of the General Election of May, 1955. The Eden Government was returned to power with a fairly comfortable Parliamentary majority of 59. Contrary to the impression that was conveyed at the time, the new Tory contingent was not younger than its predecessor in the 1951 Parliament.[6] However, many of the new men had come up through Young Conservative organizations that had been influenced by the 'new Toryism' reflected in the political attitudes of leaders such as R. A. Butler and Iain MacLeod. Their views on capital punishment were not generally known, but hopes rose among abolitionists that a sufficient number of them might be broken away from the solid battalion of retentionist Tories. Thus the abolitionists faced the twin task of holding together their forces on the Labour and Liberal side of the House and at the same time wooing more than thirty Conservative M.P.s to the cause.

The advent of a new Parliament and the impact of the Ellis case (July, 1955) convinced many abolitionists that the time was ripe for another large campaign directed at both public and Parliament. Except for occasional flurries set off by individual cases and the quiet activities of the Howard League, there had been no large

organized effort to propagate the abolitionist case since the demise of the National Council for the Abolition of the Death Penalty in 1948. This time the initiative was taken neither by the Howard League nor by the abolitionists in Parliament but by persons connected with the world of letters.

Victor Gollancz, the controversial Left-wing publisher, is generally credited with having initiated the new movement, along with the noted writer Arthur Koestler and the prominent ecclesiastical radical, Canon L. John Collins of St. Paul's Cathedral. Gollancz brought to the abolitionist movement not only his usual fiery moral passion, but also long experience with organizing and conducting campaigns to aid the underdog. For example, though a Jew and a fervent anti-Nazi, at the end of the war Gollancz campaigned against the idea of revenge against the Germans and organized the Save Europe Now Committee to collect funds and supplies for the devastated German people. Again, at the time of the war between Israel and its Arab neighbours, he founded the Jewish Society for Human Service, the first aim of which was relief for displaced Arabs. An *Observer* profile once described 'V.G.' as 'not just a man of vague goodwill but a passionate moralist, an ardent non-denominational Christian and a socialist of ethical rather than utilitarian enthusiasm', an aspirant saint with a flair for personal publicity, 'sometimes too noisy, too wilful, too insensitive for the absolute comfort of his associates'.[7] For better or worse, the large-scale public campaign of 1955 and 1956 came to be associated with the personality of Gollancz more than any other person.

Several weeks after the hanging of Ruth Ellis, Gollancz approached the secretary of the Howard League with the suggestion that together they organize a comparatively short and intensive campaign for abolition, making use of massive public meetings and all the publicity they could get. Although they were in agreement with the purpose of the Gollancz group, officials of the League felt that it was wiser not to affiliate formally with Gollancz and his friends. As in 1948, the League was sensitive about its relationship with Home Office officials and was somewhat fearful that too much publicity for its abolitionist activities might jeopardize the progress it was making in other areas of penal reform. The League did nothing to stifle the campaign, however, and several of its officers and many of its members later joined as private persons. In addition, it made available to the new group many of its resources, including its library, files, and contacts with penal officials in Britain and abroad. Thus by the middle of 1955 there were in existence two different but related groups working for abolition : one an established, multiple-purpose, rather demure reform organization, the other a new, single-purpose, publicity-conscious band of impas-

sioned crusaders. The leaders of the two groups could hardly be more different personalities; Viscount Templewood, Sir George Benson, M.P., and Hugh Klare on one side; Gollancz, Koestler and Canon Collins on the other. Yet their aims in this case were identical, and their activities were to be complementary rather than competitive.

In August of 1955 there came into being the National Campaign for the Abolition of Capital Punishment, 'with the object of bringing capital punishment to an end at the earliest possible moment'. Gollancz was chairman, and the Executive Committee was composed of Koestler, Canon Collins, Gerald Gardiner (a prominent liberal barrister who was Treasurer of the Howard League), and three persons associated with each of the major political parties: Christopher Hollis, Reginald Paget and Frank Owen. In addition, the Campaign indicated that it was forming a Committee of Honour, which was to be widely representative of national life. Among the first to be included in this group were Benjamin Britten, Professor C. Day Lewis, the Earl of Listowel, Henry Moore, Lord Pakenham, J. B. Priestley, Canon Raven, Moira Shearer and Dr Donald Soper.[8] It was apparent that part of the campaign would be the search for the endorsement of prominent and respected Britons.

In the first six months of its life, the Campaign had few Parliamentary contacts and no Parliamentary opportunities. Its chief target was the larger public, which it hoped to influence in such a manner that when the next abolitionist motion came before the House of Commons that body would be faced, for the first time in modern history, with the prospect of a nation thoroughly alarmed over the perpetuation of hanging. To achieve this the campaign planned to use not only the traditional educational campaign with its meetings, speakers, books and pamphlets, but also symbolic gestures calculated to make a special stir. It was suggested, for example, that abolitionists abstain from attending any place of entertainment or party on the eve of an execution, close their shops or places of business for an hour the day before an execution, and attend vigil-meetings at places of worship and assembly. At the same time, sympathizers were discouraged from taking part in disruptive or sensational action, such as demonstrations outside prisons, which might identify the Campaign with hyper-emotional elements in the community.[9] As things turned out, the Campaign leaders found little use for these gestures, partly because they were coolly received and could not be easily organized but chiefly because from its inception until the passage of the Homicide Act in 1957 there were no hangings in Britain. Whether the latter situation was effect or coincidence is difficult to judge, although it would have been extremely difficult for the Home Secretary to withhold reprieves during that period in

which the House of Commons was passing a series of votes against capital punishment.

Most of the Campaign's activities took place during the 1955-56 session of Parliament, which is the subject of the next chapter. The first four months of the Campaign were important, nonetheless, because this was the period in which the most active members were recruited, ammunition for the anticipated struggle in the forthcoming Parliamentary session gathered, and contacts with the principal organs of opinion strengthened. For example, Arthur Koestler and Frank Owen covered Fleet Street to make sure that the press gave publicity to the actions of the Campaign and, if possible, showed sympathy for its aims. Members of the Committee of Honour were stimulated to write to their local papers, particularly in the provinces, where press sentiment for abolition was rare. Circulars were sent to members of the Howard League, Christian Action, the Clerks of the Friends Meetings, to Labour and Co-operative Parties, and to selected members of the Bar. Gerald Gardiner revised the old Notes for Speakers of the defunct National Council for the Abolition of the Death Penalty for the use of speakers before local groups. Several of the leaders of the Campaign wrote books on capital punishment, each from a particular standpoint and aimed at different kinds of audiences. Unlike its predecessor in the late '40's, the Campaign had money to spend and, because its promoters were fond of short, intense campaigns, did not hesitate to spend it in a way calculated to draw maximum public attention.

Encouraging signs of support spurred on the group. Its first public meeting in November, 1955, filled Central Hall, Westminster, and overflowed into Church House. A collection of nearly £1,100 was raised in twenty minutes.[10] An organizing secretary was hired. In addition to its London headquarters in the publishing offices of Victor Gollancz Ltd., the Campaign opened a Scottish office and set up local committees in Birmingham, Sheffield, Leeds, Bristol, Cardiff, Swansea and elsewhere. By the end of 1955 it had collected the names of sixteen thousand active supporters and had asked all of them to contact their M.P.s early in the new year.[11] A substantial body of sympathisers was now in hopeful readiness for action when Parliament chose to take up the death penalty issue once again.

The National Campaign was not the only group to be vocally demonstrative on the question. Its members strove to get other groups to declare their views, as well as to create a sense of urgency that would call forth debate and resolution among individual Britons. A Howard League petition signed by 112 public opinion leaders begged the Home Secretary to reconsider implementing the 'admirable recommendations' of the Royal Commission on Capital Punishment.[12] Major Lloyd George remained unmoved by both

pleas, however, and in November announced the government's total rejection of all the Royal Commission's proposals that would involve legislation.[13] In September the Liberal Party Council passed a resolution urging the Parliamentary Liberal Party to do everything in its power to secure the early removal of the death penalty.[14]

By late 1955 several signs appeared that gave a fillip to the organizers of the campaign. The results of an Oxford Union debate before a standing-room-only crowd of students showed 378 in favour of the motion 'that the Death Penalty should be abolished forthwith' and 161 opposed. Two years earlier when the same subject was debated, the majority for abolition had been only 40.[15] The polls, too, began to show a rather significant movement of public opinion away from the absolute retention of the death penalty and toward either abolition or some experimental middle ground. As will be shown shortly, at no time were the abolitionists able to claim a majority for their position, but instead they had to base their case upon evidence that opinion was moving in that direction in a rather remarkable way.

One of the most revealing indications of this trend was the survey taken by Mass-Observation for the *Daily Telegraph* in January, 1956, a month before the House of Commons cast an important vote on another proposal for abolition. As will be recalled, the same polling organization conducted a similar survey in April, 1948, immediately *after* the Commons had taken its original decision to suspend capital punishment experimentally for five years. Thus some comparisons between earlier public attitudes and those of 1956 are possible, although the data are not precisely comparable because one poll was taken before Parliament had spoken and one after a concrete vote in the House of Commons. It is likely that the 1948 results showed the effects of an immediate situation and the 1956 results the quality of more generalized opinion. In each poll the stratified sample was 6,110 persons, and the same open-ended questions were used, with the responses subsequently organized into categories by Mass-Observation.[16]

The 1956 pollers used a technique that had not been used previously. First they asked their respondents, 'Do you approve or disapprove of capital punishment or haven't you made up your mind?' Respondents answered in the following ways:

	Per cent
Said they approved of capital punishment	49
Said they disapproved	18
Had not made up their minds	25
Favoured recognizing degrees of murder	7
Gave miscellaneous answers	1

Then the same persons were asked to respond to the possibility of

the death penalty being given up experimentally for five years. In this case,

34% said they approved of such an experiment
45% said they disapproved
9% had not made up their minds
5% registered mixed feelings
2% favoured recognizing degrees of murder
5% gave miscellaneous answers

By posing two related but not identical alternatives, the pollers thus were able to fathom differences in attachment to the *principle* of the State's right to impose the death penalty and to a fairly specific *proposal* that a trial suspension period be established. It may very well be, as retentionists often argue, that once such an experiment is tried it will be impossible to return to capital punishment. The above figures indicate, however, that many Britons who were unwilling to declare themselves in favour of abolition in principle nonetheless were quite willing to see an experiment in abolition tried.

Tables 2 to 7 below give the polling results on the issue of trial suspension broken down into familiar categorical groups, with figures from both the 1948 and 1956 Mass-Observation surveys. Table 8 indicates differences in attitude on the basis of newspaper readership. Missing from these tables are statistics which might indicate the influence of socio-economic class. Data on class attitude exist, but unfortunately these polls used two different indices of class which cannot effectively be compared. In neither 1948 nor 1956, however, did the data indicate any appreciable difference in attitude among social classes. For example, in 1956 the percentage of persons approving the trial suspension was 35, 35 and 34 among roughly the upper middle, lower middle, and working classes, while the percentage of those disapproving the experiment was 45, 45 and 55 for the same groups.

TABLE 2

PERCENTAGE OF PEOPLE HAVING THIS ATTITUDE TOWARD A TRIAL SUSPENSION OF CAPITAL PUNISHMENT

View Expressed	1948	1956
Approve of the trial suspension	13	34
Disapprove of the trial suspension	69	45
Degrees of murder should be recognized	7	2
Mixed feeling	4	5
Miscellaneous replies	2	5
Don't know	5	9

TABLE 3

PERCENTAGE OF EACH SEX FAVOURING VIEWS ON THE PROPOSED TRIAL SUSPENSION OF CAPITAL PUNISHMENT

	1948	1956
Men		
Approve of the trial suspension	15	36
Disapprove of the trial suspension	69	48
Degrees of murder should be recognized	8	2
Mixed feelings	3	4
Miscellaneous replies	2	5
Don't know	3	5
Women		
Approve of the trial suspension	12	33
Disapprove of the trial suspension	69	42
Degrees of murder should be recognized	6	2
Mixed feelings	4	6
Miscellaneous replies	2	5
Don't know	7	9

TABLE 4

PERCENTAGE OF EACH AGE GROUP FAVOURING VIEWS ON THE PROPOSED TRIAL SUSPENSION OF CAPITAL PUNISHMENT

	16-24	25-44	45-64	65-over
Approve trial suspension				
1948	18	14	11*	
1956	38	36	33	28
Disapprove suspension				
1948	60	69	71	
1956	41	45	45	47
Degrees of murder				
1948	9	7	7	
1956	2	2	2	2
Mixed feelings				
1948	3	3	4	
1956	4	4	6	7
Miscellaneous replies				
1948	1	2	3	
1956	5	5	5	5
Don't know				
1948	9	5	4	
1956	12	8	9	11

*Unlike the 1956 poll, the earlier poll used a single classification, 45-over.

TABLE 5

PERCENTAGE OF ATTITUDE TO TRIAL SUSPENSION AMONG THOSE LEAVING SCHOOL AT VARIOUS AGES

	Up to 15	Up to 16½	Over 16½
Approve trial suspension			
1948	11	14	21
1956	34	35	40
Disapprove suspension			
1948	71	68	63
1956	45	44	42
Degrees of murder			
1948	7	9	7
1956	1	2	2
Mixed feelings			
1948	3	4	5
1956	5	5	5
Miscellaneous replies			
1948	6	2	2
1956	5	5	6
Don't know			
1948	2	3	2
1956	10	9	5

TABLE 6

PERCENTAGE ATTITUDE TOWARD TRIAL SUSPENSION AMONG PEOPLE WHO EXPRESS CERTAIN RELIGIOUS PREFERENCES

	None	Ch. of Eng.	Roman Cath.	Ch. of Scot.	Nonconform.	Jewish*	Other*
Approve suspension							
1948	16	10	15	12	17	40	30
1956	36	32	45	30	35	39	40
Disapprove suspension							
1948	65	72	66	70	66	42	50
1956	42	48	35	44	42	37	37
Degrees of murder							
1948	8	8	7	3	7	8	5
1956	2	2	1	2	1	2	—

Mixed feelings							
1948	4	3	5	4	4	2	7
1956	5	5	4	5	6	5	6
Miscellaneous							
1948	2	2	2	2	2	2	4
1956	5	4	7	5	6	5	7
Don't know							
1948	5	5	4	9	4	6	4
1956	10	9	8	10	10	12	10

*The sample for these groups was too small to be statistically significant.

TABLE 7

PERCENTAGE ATTITUDE TO TRIAL SUSPENSION AMONG THOSE SAYING THE PARTY THEY USUALLY SUPPORT IS:*

	Cons.	Lab.	Lib.	Undecided	None
Approve suspension					
1948	8	19	16	14	14
1956	30	38	39	33	35
Disapprove suspension					
1948	76	63	65	64	62
1956	50	42	43	43	39
Degrees of murder					
1948	7	9	7	10	7
1956	1	4	2	2	1
Mixed feelings					
1948	4	3	6	4	4
1956	6	2	6	4	5
Miscellaneous					
1948	2	1	3	2	3
1956	5	5	4	7	5
Don't know					
1948	3	5	3	6	10
1956	8	9	6	11	15

*Minor parties not included.

TABLE 8

PERCENTAGE ATTITUDE TOWARD TRIAL SUSPENSION AMONG THOSE SAYING THEY USUALLY READ

	Newspapers Read											
	Daily Telegraph	Daily Mirror	Daily Express	Daily Mail	Daily Herald	News Chronicle	Daily Sketch	The Times	Manchester Guardian	Other†	None	Total
Approve suspension	32	35	35	31	37	41	37	35	51	32	32	34
Disapprove suspension	48	45	44	50	45	39	47	42	24	45	40	45
Mixed feelings	6	5	5	5	4	5	5	4	3	7	4	5
Degrees of murder	3	2	2	2	1	1	*	2	1	1	1	2
Other answers	7	4	6	4	6	7	3	9	17	5	6	5
Don't know	4	9	8	8	7	7	8	8	4	10	17	9

†Includes some evening papers.

*Less than 1 per cent.

The general direction of opinion on the question of trial suspension, as reflected in these figures, is clearly away from retaining the death penalty in all cases and toward something close to the abolitionist position.[17] In almost every one of the subgroups examined in Tables 3 to 7 the same pattern of increased approval for an experiment in abolition can be noted, although in certain groups approval is clearer than in others. As in 1948, the sex of the respondent appeared to have little influence on his attitude toward the issue, despite what was being said at the time about the emotional effect upon women of the Ellis case. The pattern of the 1948 poll remained, too, when the factor of age was isolated: experimental abolition found somewhat greater favour among the young than among older people. The Mass-Observation pollers put forward the view that younger people had read more about the problem than their elders and had been more influenced by the Bentley and Ellis cases, while older people who responded were more apt to mention cases of murders of children and older people. Unlike the 1948 results, when education appeared to be the most obvious conditioning factor, in 1956 the gap in opinions narrowed considerably between those who left school before they were fifteen and those who continued on to higher education after 16½, as indicated in Table 4. The absence of marked differences along educational lines may reflect the influence of the wide publicity capital punishment had received in the middle 1950's. In a fairly noticeable way (but much less striking than was visible in Parliamentary voting), political affiliation seemed to matter. The supporters of none of the major parties turned up a majority for trial suspension, but the strongest showing for this position came among Labour and Liberal supporters, with Conservatives more likely to disapprove of this or any other change in the law. Religious preference also could be correlated with differing attitudes, with members of the Church of England and Church of Scotland emerging as least likely to support the experiment, and Nonconformist, Roman Catholic and Jewish members more in favour of it. Most striking—and most difficult to explain—was the three-fold increase in the proportion of Catholics who indicated approval of trial suspension. This result came despite the comparative silence of the Church's hierarchy on the issue. Certainly the figures in Table 6 cannot be explained along straight liberal-conservative religious lines. Finally, the Mass-Observation results hardly reinforce the claim that the newspapers' editorial views were instrumental in shaping their readers' views on capital punishment. With the exception of the *Manchester Guardian* and the *News Chronicle,* none of the national newspapers were capable of pushing their readers more than five

per cent away from the national average of those who supported or disapproved the idea of suspending the death penalty.

The reasons given by most of the respondents in 1956 to justify their support of capital punishment or of trial suspension of it were pretty much the same as those adduced by their predecessors in 1948, adding to the impression that there is little new under this particular sun.[18] More revealing were the explanations offered by the thousand-odd persons who declared that they had recently heard, seen, or read something that helped them make up their mind on the issue.

TABLE 9

PERCENTAGE OF THOSE SAYING THAT THIS ISSUE HAD HELPED THEM TO MAKE UP THEIR MIND RECENTLY

	Those approving Capital Punishment (Per cent)	Those Disapproving (Per cent)
Ellis murder case	8	24
Bentley-Craig case	2	9
Evans-Christie case	1	9
Other named murder cases	4	3
Other unnamed murder cases	21	10
Murder cases of any description	38	43
A general increase in crime	8	—
Dangers to children and old people	19	2
Miscarriages of justice	—	12
Activities of 'Teddy Boys'	3	—
Effect on those who are left	—	1
Miscellaneous answers	6	9
Number of cases	670	328

This type of question hardly serves to isolate the forces that might influence everyone's views on capital punishment, but it does give a rough indication of the issues likely to have the greatest effect upon the 'don't knows' and undecided elements in the population. In particular, the table shows that persons who became opposed to capital punishment in the mid-1950's were much more apt to cite specific *causes célèbres,* while those in favour of retaining it relied more often upon murder cases in general and dangers to children and old people in particular. That the Ellis case figured most prominently among the named murder cases may be explained partly by its recentness and by the large volume of publicity always accorded the violence of love-triangles. No doubt of equal interest to the organizers of the abolitionist campaign was the percentage of references—about 1 in 8 of those recently shifting to approval of suspension—to the possibility of an innocent man being hanged. Whatever the views of those persons whose minds had long been

made up on this issue, it would seem that for the recent deciders the argument from specific murder cases was more immediate and compelling than the argument from the general idea of deterrence.

The cumulative impact of these polling results should not obscure the overall situation in late 1955. No matter which measure is employed, one stark conclusion emerges: the majority of Britons still approved of capital punishment in some form. Of course there had been a significant movement of opinion toward either abolition or some middle ground; but it did not produce a decisive majority, and no one could say how lasting the abolitionist sentiments of the moment might be. The debate on the Royal Commission's proposals and the publicity given to several pertinent murder cases had aroused the feelings of a large sector of the public, and the early activities of the National Campaign offered intellectual reinforcement and social support for these feelings. But this was not enough. An opportunity for government action had to come soon or the new atmosphere might fast dissipate without effect. Only Parliament could provide this opportunity.

NOTES

[1] Figures taken from the files of the British Institute of Public Opinion. The question reads: 'In this country most people convicted of murder are sentenced to death. Do you agree with this or do you think that the death penalty should be abolished?'

[2] Captain Crookshank was replying to a motion by Sydney Silverman and signed by 47 other Labour Members, expressing 'profound disquiet' at the Home Secretary's failure to use the prerogative of mercy in the case of a condemned woman who one prison doctor had claimed was insane.

[3] 536 *H. C. Deb.* 2064-2180 (February 19, 1955).

[4] See pp. 49-50 above.

[5] 536 *H. C. Deb.* 2090.

[6] In 1951 out of a total of 321 Conservatives elected, 75 were in their twenties and thirties: in 1955 this figure was 57 out of 344. D. E. Butler, *The British General Election of* 1951 (London, 1952), p. 37, and *The British General Election of* 1955 (London, 1955), p. 40.

[7] March 11, 1956. These qualities are well demonstrated in Gollancz's tract *Capital Punishment: The Heart of the Matter* (London, 1955).

[8] *The Times,* August 26, 1955.

[9] See Gollancz's letter to *The Spectator,* 195 (August 26, 1955), p. 276.

[10] *The Times,* November 11, 1955.

[11] 'A Spectator's Notebook,' *Spectator,* 195 (December 30, 1955), p. 884.

[12] *The Times,* August 4, 1955. A similar plea came from the Society of Labour lawyers, *The Times,* January 23, 1956.

[13] 545 *H. C. Deb.* (November 10, 1955), col. *219-220.*

[14] *The Times,* September 26, 1955. The resolution, which passed by a large majority, was moved by a member of both the Howard League and the NCACP.

[15] *The Spectator,* 195 (November 11, 1955), p. 618.

[16] The polling results that follow are all taken from *Capital Punishment: A Survey* (1948) and *A Report on Capital Punishment* (1956), by courtesy of Mr. Leonard England of Mass-Observation.

[17] Similar results were found by a British Institute of Public Opinion poll taken in February, 1956. Poll s. 457a, files of the BIPO.

[18] The following replies, however, at least had the virtue of freshness: 'No, I think the death penalty had better stay as a detergent.' 'It's hanging I don't like. They should have elocution, as in America.'

CHAPTER 6

CONSERVATIVE GOVERNMENT AND ABOLITION

PRESSURE FROM THE BACKBENCHES

A NEW Parliament met in November 1955 in what the abolitionists hoped was a new mood. Although it had been less than a year since the House of Commons had rejected a motion to suspend capital punishment, the feeling persisted that the events of the preceding six months—the advent of a new group of M.P.s, the Ellis case, the formation of the National Campaign—had worked changes in public and Parliamentary opinion which gave hope and deserved testing. The abolitionists were keen to air the question once more, if only out of fear that seldom again would the auguries be as favourable to their cause as they were at that moment.

Before the full strategy could be determined, there arose a problem of tactics. It centred not so much around who would lead the new attack (Silverman was by now the acknowledged Parliamentary leader) but on the timing of the battle. The extra-Parliamentary abolitionists, particularly the leaders of the National Campaign, were concerned lest the issue be allowed to come to a head too rapidly, before their organization was fully developed and before the public had a chance to benefit from exposure to the case as they were putting it. They preferred to hold off any Parliamentary action until later in the session or possibly until late in 1956. On the other hand, Silverman and his band of M.P.s were convinced that the earliest available opportunity should be seized to put the new Parliament to the test. This was partly because they were anxious to take advantage of the favourable shift in public opinion (which might be reversed by the passage of time or the commission of some particularly heinous murder) and partly because they wanted to make room for the capital punishment issue before the Parliamentary calendar filled up completely. When it came to a decision, the Parliamentary strategists prevailed over the outside group, and despite the reservations of Gollancz and the propaganda-minded wing of this movement, it was determined that an attempt would be made to get the House of Commons to act as soon as possible in the new session.

Because the Government remained adamant in its refusal to bring

in an abolition bill of its own, the abolitionists in the Commons were forced to rely upon parliamentary tactics that ordinarily have little chance of success. Their first effort was to try to get a place for a Private Member's Bill in the balloting that takes place at the beginning of every session.[1] Only a very few such bills—perhaps a half-dozen in a session—manage to pass through this needle's eye and on to the statute books, especially if they encounter Government hostility at any stage; but deprived of other opportunities to get Parliamentary time, the abolitionists had to gamble on the outside chance. To their amazement, one of their number, John McGovern (Labour), drew third place in the balloting and notified the Speaker of his intention to introduce a Private Member's Bill to suspend capital punishment. To their horror, however, McGovern was not in his place on November 8th when the measure bearing his name was read in the Commons for the first time, which meant that the bill advanced no farther that session.[2] An important, if not golden, opportunity had been lost, and the abolitionists again were thrown back upon their slight resources.

Several days later, the Home Secretary announced that after deliberation the Government had decided that it could not accept any of the recommendations of the Royal Commission on Capital Punishment relating to the death sentence and the tests of criminal responsibility.[3] Thus none of the Gowers Commission's proposals were likely to see the light of day. This decision, along with the abolitionists' failure to launch a Private Member's Bill, spurred Sydney Silverman to try once more. His procedural resources were now few, but he was resolved to tax them all. This time he chose to try to bring in a bill under the Ten Minute Rule. Under this procedure, any Member can ask leave of the House to present a bill on any subject on the evening before he intends to move it. He is allowed to make a ten minute speech in favour of the bill, and then it is open to one opponent to reply. If the House agrees to the motion, this constitutes the bill's First Reading. There still remain the usual hurdles—the Second Reading, Committee Stage, Third Reading, and the House of Lords. Its future stages must take place at the time of unopposed business, and if any Member objects to it then, it will be postponed indefinitely by being dropped to the bottom of the list of Private Member's Bills. Such a procedure seldom permits a bill to reach the statute book (unless the Government allows further facilities), and a bill's prospects for success are considered so remote under the Ten Minute Rule that usually it is used merely to ventilate the ideas which the bill embodies.[4] Nevertheless, it is the custom that members who oppose the principle of the bill will challenge it at the first presentation and thus test the opinion of the House.

It was under this procedure that Silverman, backed by seven Labour, two Conservative, and two Liberal M.P.s, asked leave to bring in his Death Penalty (Abolition) Bill on November 16th.[5] Contrary to expectations, no one rose to object and force a division, and Silverman was permitted to present his bill by a unanimous House. This did not reflect a conversion of the whole House to abolition, however, for two days later the Leader of the House, Captain Crookshank, made it plain that despite a motion on the order paper signed by over 170 members of all parties suggesting that further time be given to the Silverman Bill, the Government intended to give it no further facilities.[6] A day later, several retentionist Members cried 'object' to the motion that the bill receive a Second Reading, and it passed to the bottom of the list, presumably lost for the session.

At first blush these events seem baffling. Why was it that no one rose to oppose the Silverman motion at its first reading but several M.P.s heartily objected at the later stage ? In the preceding Parliament Silverman had never been allowed to move beyond the stage of raising the issue. Now a bill was permitted to get at least a foot in the door. The explanation seems to be that many Conservative members in the new Parliament were by no means as in favour of capital punishment in all its forms as they once had been, and this mood change had to be taken into account by the party leadership in its desire to prevent a head-on clash on the issue at this time.[7] In order to save itself from embarrassment, the Government had to manoeuvre things so that the House was not forced to vote on the straight question of abolition. First, as already indicated, the Home Secretary rejected all those recommendations of the Royal Commission that required legislation, conceivably because he had an intrinsic objection to them but also because the Government was determined that no bill dealing with anything touching on capital punishment should be debated in such a way as would lead to a division. The Government then allowed the Silverman motion under the Ten Minute Rule to pass unopposed and subsequently objected to keep the bill from getting a second reading, again obviating the need for a vote on the issue. These Parliamentary dodges were quite legitimate, of course, and they succeeded in keeping Conservative discontent below the surface for the moment. But such tactics also strengthened the abolitionists' belief that they had considerable support on the Tory back bench, and they reinforced the general view that Government leaders would have to do something soon to take in account the dissatisfaction of many of its Parliamentary followers over the condition of the law of murder.[8] The question now seemed to be on whose ground the issue would be joined. Here the Government was in a position to choose the time and place.

That the search was on again for some appropriate middle ground between the *status quo* and total abolition was apparent from the aptly-timed publication in January, 1956, of a pamphlet prepared by a committee of the Inns of Court Conservative and Unionist Society entitled *Murder: Some Suggestions for the Reform of the Law Relating to Murder in England*.[9] The committee, headed by a former Attorney-General (Sir Lionel Heald) and composed of eight prominent barristers (four of them M.P.s), advanced the view that no effective decision of the question of capital punishment was possible until the law of murder itself was reformed, and proceeded to analyze certain 'anomalies and anachronisms' in the law with a view to their reform. It urged the Government to retain capital punishment but to accept many of the Royal Commission's recommendations on the subjects of constructive malice, provocation, and diminished responsibility, reserving the right to permit certain exceptions to the Commission's sweeping proposals. At the time of its publication, the Heald Report evoked relatively little response, sympathetic or otherwise, although abolitionist critics were inclined to see in it an attempt to buy off the growing agitation for more sweeping change, and remained sceptical about the substantive changes in the law that the reforms would work.[10] Coming on the heels of the decision on the Gowers Commission recommendations and the manoeuvring to avoid a vote on the Silverman bill, the Heald Report struck abolitionists as nothing more than another Government-inspired delaying tactic.

At the beginning of 1956 the Government was under considerable pressure, from both inside and outside Parliament, to permit a full-scale debate on the capital punishment issue. In addition to needling questions put down by Labour abolitionists, many Tory back-benchers were restive over the stalling tactics that the Government was so obviously employing. In the middle of January the Government reluctantly agreed to have the question aired in the Commons.[11] Now that it had decided to allow a debate, the Government was determined to do all it could to stave off an abolitionist victory on a free vote. Its leaders were well aware that seventeen of its supporters had voted in favour of the abolitionist motion a year before; they also knew that the events of the intervening period had aroused sympathy for the abolitionist cause among new members and old. It had to find some kind of proposal that would satisfy at least some of the milder abolitionist sentiments on its benches while not conceding the principle of total abolition to its foes.

It was at this point that the Government apparently discovered the recommendations made by the Conservative Inns of Court Society for the reform of the law of murder. Early in February a motion was tabled bearing the names of the Prime Minister, the

Leader of the House of Commons, the Attorney-General and the Secretary of State for Scotland to the effect that 'this House is of the opinion that while the death penalty should be retained, the law relating to the crime of murder should be amended'.[12] The Government promised a free vote on the motion. It was believed at the time that the kind of amendment the Government had in mind was very much along the lines of the Heald Committee's findings in the areas of constructive malice, provocation, and diminished responsibility, and that it was aimed at drawing support from those moderates who would be satisfied by changes in the law that fell short of suspending capital punishment itself. Ironically, in this effort to satisfy a handful of its supporters the Government found itself in the position of putting forth proposals not unlike those it had rejected three months earlier in reviewing the work of the Royal Commission. To the proponents of abolition (who saw in the manoeuvre the skilful hands of R. A. Butler) this was obviously an attempt to launch a lifeboat into which some of the less certain consciences could gratefully clamber. Success in this venture would dash abolitionist hopes at least for the lifetime of this Parliament.

The abolitionists quickly saw the diversionary character of the Government motion and responded by proposing an amendment calling upon the Government to bring in legislation for the abolition or experimental suspension of the death penalty. The amendment stood in the name of Mr Chuter Ede, the very person who six years earlier as Home Secretary had advised the House against the original Silverman clause, and was supported by twenty other members of all parties.[13] Thus the battle lines were drawn once again, and each side began to jockey for position in what was anticipated to be a very close fight.

EXTRA-PARLIAMENTARY PRESSURES

Pressure from outside Parliament was also building up in preparation for the impending debate. The National Campaign for the Abolition of Capital Punishment, for example, began to turn its attention from proselytizing the general public to mobilizing its resources for bringing pressure to bear on the House of Commons. In the six months preceding the February debate the National Campaign's membership had more than doubled and stood at 30,000 by January, 1956. Its Committee of Honour numbered 70 and included eight church leaders, six peers, six M.P.s, and dozens of prominent figures in scholarship, the arts, and the professions (among them now Sir Jacob Epstein, Christopher Fry, Gilbert Harding, Augustus John, Sir Compton Mackenzie, Bertrand Russell, Dame Edith Sitwell, Stephen Spender, Graham Sutherland, Rebecca West, and

Barbara Wootton). In order to insure close liaison between the National Campaign and the abolitionists in Parliament, Sydney Silverman and a young Tory M.P., Peter Kirk, were brought on to the Executive Committee. Numerous local committees were active all over Britain in the winter and early spring, and national leaders spoke at rallies throughout the land.[14] The group in Birmingham, for example, obtained 4,000 signatures on an abolitionist petition addressed to the Home Secretary.[15] Some ninety volunteers mailed out letters to the entire membership urging them to contact their M.P.s before the February 15th vote. Several M.P.s commented that never before had they received so much mail on a single topic. Retentionist Members took pains to warn the House against being steamrolled by pressure from a hyperactive minority in the country.[16] The National Campaign made quite sure that each M.P. was fortified with copies of all of its publications on the eve of the debate. Compared to the 1948 campaign, this was an efficiently run, pervasive propaganda effort, with no real shortage of funds or voluntary labour.[17]

Abolitionists have always been more concerned with putting their case into print than have been the proponents of hanging, and all the books on the subject that appeared in this period were written from the one point of view. Late 1955 and early 1956 saw four additions to this literature, three of them written by members of the Executive Committee of the National Campaign and published by Victor Gollancz Ltd. Their publication was part of the efforts of the National Campaign to reach as wide an audience as possible, and for that reason the tone and content of the books were varied to appeal to different types of readers. For example, the first to appear, Victor Gollancz's *Capital Punishment: the Heart of the Matter*, was a short tract designed to make the case against the death penalty from the standpoint of absolute moral values. Its readers were asked to examine the subject in the light of basic religious emotions rather than simply at the level of empirical arguments about murder statistics and the probabilities of deterrence. Arthur Koestler's *Reflections on Hanging* was a longer but in some ways equally moralistic and emotional examination of the history of the death penalty in England. Highly critical of all opponents of abolition (especially the judges), Koestler marshalled every resource he could and with his usual literary vigour drew up a ruthless indictment of prevailing British attitudes toward punishment. The book was full of gruesome details of crimes and punishments past and present, and these sections were serialized in the *Observer* at the height of the controversy in Parliament. The third book written at the behest of the National Campaign, Gerald Gardiner's *Capital Punishment and the Alternative*, was of a very different sort. Written with the

logic and conciseness of a legal brief, it made a calm and dispassionate appeal to those whom rational and legal modes of argument persuade where emotionalism fails.

It can be surmised that these three books made a greater impact on the public at large than they did on uncommitted Members of Parliament, partly because the authors were known to be long-time abolitionists and active members of the National Campaign and, therefore, 'interested parties'. The fourth book that appeared at that moment, Sir Ernest Gowers' *A Life for a Life?*,[18] was in a class by itself, however. More important than the book's judicious and unemotional examination of the controversy was the revelation that Sir Ernest, chairman of the Royal Commission on Capital Punishment of 1949-53 and the very model of the cautious and discreet civil servant, had become a convert to abolition. The conversion was all the more impressive because it had occurred quietly and only after long deliberation.

Before serving on the Royal Commission [wrote Sir Ernest] I, like most other people, had given no great thought to this problem. If I had been asked for my opinion, I should probably have said that I was in favour of the death penalty, and disposed to regard abolitionists as people whose hearts were bigger than their heads. Four years of close study of the subject gradually dispelled that feeling. In the end I became convinced that the abolitionists were right in their conclusions—though I could not agree with all their arguments—and that so far from the sentimental approach leading into their camp and the rational one into that of the supporters, it was the other way about.[19]

Support of the abolitionist amendment from persons and groups not connected with the National Campaign gained momentum in the days immediately preceding the Commons debate. In the week of February 10th-16th, for instance, pleas for the suspension of hanging were made by, among others, the President and former President of the Methodist Conference, the Social Responsibility Department of the British Council of Churches, the National Council for Civil Liberties, the *Justice of the Peace and Local Government Review,* and a distinguished group of secondary school and university educators from all over Britain.[20] Members of Christian Action distributed abolitionist pamphlets to churchgoers in the major cathedrals and parish churches in the weeks preceding the vote in Parliament.[21] Public debates before debating societies (such as the Eighty Club and the National Liberal Club) produced abolitionist majorities, and numerous radio and television programmes were devoted to discussions among the proponents and foes of hanging.[22]

The press was aligned in much the same way as it was during the 1948 debate, although this time it gave much greater background coverage to the capital punishment question than on the earlier occasion. This can be attributed partly to the propaganda efforts of the National Campaign and partly to the simple fact that the issue had been hard news on and off steadily for the preceding half-dozen years. Two influential national newspapers switched sides during this interim. After a change of editors, *The Times* moved from mild support of abolition to mild support of retention, and the mammoth-circulation *News of the World,* which in 1948 demanded a national referendum to revise the abolitionist actions of the House of Commons, now was telling its Sunday millions that 'the most sensible and enlightened course [would] be to give the hangman a holiday for say five years'. This latter course naturally had the support of the long-time abolitionist dailies and weeklies such as the *Manchester Guardian, Daily Herald, Daily Mirror, News Chronicle, Reynolds News, Observer, Spectator, Economist,* and *New Statesman.* Almost all of them found fault with the Government's proposals for the reform of the law of murder, many of them echoing the belief of the *News Chronicle* that they looked 'suspiciously like a red herring'. Fearful that the Government again would invoke the authority of *vox populi* as a defence of its continued support of hanging, some abolitionist papers argued against the notion that public opinion should set public policy and urged Parliament to pay more attention to Burke and less to Gallup. A particularly notable triumph for the abolitionists was the conversion of the widely-read, highly regarded *Daily Mirror* columnist Cassandra, who was able to bring the case to the breakfast tables of many Britons who hitherto had only the vaguest knowledge of Bentley, Evans, Ellis, or Sir Ernest Gowers.

If the journalistic support of abolition came largely from the section of the press disposed to favour Labour and Liberal policies, the advocates of the Government's position were found chiefly among Conservative-minded newspapers. Besides *The Times* (which hardly gave a bold lead), the Government was able to rely upon the support of newspapers such as the *Daily Telegraph, Daily Mail, Daily Express, Daily Sketch,* and most of the Sunday and provincial papers. Neither side could complain of inadequate news and editorial coverage of its case. One of the special preoccupations of the retentionist newspapers was with the support for capital punishment that they continued to find among the public. A week before the critical vote in Parliament, for instance, the *Sunday Dispatch* conducted its 'famous 50-Town Survey' and found among its sample of one thousand, 606 persons for the continuation of hanging, 329 against it, and 65 undecided; while the *Daily Sketch* asked its

readers to fill in, cut out, and mail in their views on a 'Hanging Debate Ballot', the results to be published on the day of the Commons debate 'so that M.P.s can take note of the opinions of the voters'. Once again a clear majority for keeping the death penalty was discovered, and the politicians were asked to draw the only conclusion open to them.[23] On a more emotional level, several of the mass-circulation dailies gave prominent coverage to interviews with the survivors of murder victims. The *Daily Mail* on February 13th, for instance, featured tear-jerking interviews with the wives of two murdered police officers, one of whom summed up her feelings in the phrase, 'I say hang the lot', and two days later the *Daily Sketch* devoted two complete pages to similar material, including a picture of a murder victim's widow filling in the *Sketch's* Hanging Debate Ballot. The abolitionist press drew heavily from its files on Bentley, Evans, Christie, Ruth Ellis, and the hangman Pierrepoint, while the retentionist papers never lacked ammunition and always were able to uncover a policeman's widow and children, new evidences of an increase in psychopathic murderers, and various brides in the bath. Many organs of the press pursued simultaneously a 'high road' in their features and editorial comment and a 'low road' in their selection of news items and choice of headlines.[24]

On two things almost all outsider observers agreed: the free vote in the Commons was likely to be very close, and its outcome probably would depend on the size of the Tory backbench abolitionist group. The real question was whether the Government's motion would prove attractive and promising enough to these M.P.s to allow them to support the Government position without compromising their private views on the death penalty. In a last-minute attempt to close ranks, the Government leadership called a meeting of the Conservative Home Affairs Committee to hear statements from Home Secretary Lloyd-George and Leader of the House Butler.[25] Both men stressed that the Government was strongly in favour of retaining capital punishment but underlined their belief that the proposed changes in the law would eliminate some of the anachronisms and anomalies that were worrying the back-benchers. It was apparent from Butler's remarks that the Government was not prepared to move quickly to amend the law of murder, and Lloyd-George admitted that the changes that were contemplated would probably not result in fewer executions or establish basically different principles from those already taken into account in practice. At the conclusion of the meeting the whips remained confident that the Government would get a narrow majority, although it was admitted that much might turn on the debate itself, since this was to be a free vote situation.

DECISIONS IN THE COMMONS

It was before a packed and intent House of Commons that Major Lloyd-George opened the February 16th capital punishment debate with his motion 'that while the death penalty should be retained, the law relating to the crime of murder should be amended'.[26] This was the big day for abolitionists and retentionalists alike. Because each side was allowing its supporters (including Ministers) a completely free vote, the outcome of the day's proceedings was very much in doubt, and the debate went forward with an intensity not often equalled on those more normal occasions when the whips are on and the caucus decision fully known.

The task of each side was two-fold on this occasion. The Government had to convince a majority of the House that capital punishment should be retained, but that the law of murder was in need of particular reforms, while the abolitionists were faced with the need to make a successful case against the death penalty and to show that the Government proposals failed even to touch the true issue.[27] This two-pronged Parliamentary situation in part explains the rambling and often discursive character of the debate.

Four impressions stand out from a reading of the debate. First, it was clear that as usual no really new arguments were being advanced by either side. As Arthur Koestler pointed out at the time, if nothing but the scoring of points for argument had been involved, the result would probably have been a stalemate.[28] By this time debates on capital punishment seemed to follow a fairly standardized form. Second, what really had changed was the atmosphere in which argumentation was taking place. As a result of the events leading up to the debate, the Government was very much on the defensive, even though it had laid down what it considered to be a positive motion for reform. In contrast to the retentionists' position in 1948, the Government was aware that much of the burden of proof for the continuation of capital punishment was on itself and not the other way around. In effect, the starting-point of debate had shifted, with both sides now accepting the premises that capital punishment is (1) a deterrent to murder and (2) an evil thing, but with both sides willing to perpetuate it only if it could be shown that it was a *unique* deterrent and a *necessary* evil. If this was common ground, it was ground on which the abolitionists could fight more effectively than their opponents. Third, much of the debate was given over to the question of whether or not an innocent person might still be hanged for murder in Britain. In 1948 this was a weak and hypothetical argument trotted out by the abolitionists; in 1956, by contrast, it was a point that had actuality and had been brought home to millions of persons in the country. The spectres

of Timothy Evans and Derek Bentley hovered over the proceedings, and by dwelling upon their fate, the abolitionists forced the Government spokesmen to utter again the familiar slogan that no innocent person had been hanged in England within living memory. These exchanges brought forth strong emotions, and this time it was the proponents of capital punishment who sought to cool the passions of the House. Finally, there was much ado about the state and proper role of public opinion on the subject. As indicated in the preceding chapter, almost all polling results had shown both that a majority in the country still was opposed to abolishing hanging and that there was now a sizeable and growing minority for abolition or some limitation on present practices. The split in the country was such that neither side knew exactly how to deal with the question of public opinion. In the debate this point was raised more often by the abolitionists (again in contrast with 1948), most of whom argued that although Parliament still had to be bound by its own judgment on all matters, it had to bear in mind the trend of public sentiment of the preceding months and the fact that many former advocates of the death penalty (such as Sir Ernest Gowers) had now come around to the opposite view. Undoubtedly these developments were stressed to show the uncommitted or faint-hearted Conservatives that a vote for the abolitionist amendment could be justified on grounds other than private conscience.

The debate was also notable for the performances of certain individual Members. Those Members whose experience went back to 1948 must have found irony in the fact that the abolitionist amendment was moved by former Home Secretary Chuter Ede and supported strongly by former Leader of the House Herbert Morrison, two implacable foes of the original Silverman clause, and by their juxtaposition to the 1948 abolitionist Major Lloyd-George. Echoes of an earlier approach to the subject were found, too, in the words of Sir Patrick Spens: 'I am absolutely convinced —I know—that fear of violent death is a deterrent, and no statistics, no arguments whatever, will convince me that it is not'. And in marked contrast to his behaviour on other occasions, the abolitionist leader Sydney Silverman impressed the House with a temperate and reasoned speech, which won the encomium of the new Leader of the House. For his part, Mr Butler did his best to characterize the Government proposals as moderately progressive steps which every reasonable man ought to accept. In a phrase that he later must have regretted, however, he promised not only a free vote but that the Government would take action on the decision of the House, whichever way it went.

At 10 p.m. the moment for a vote on the abolitionist amendment finally arrived. The division lobbies filled quickly. One Labour

Member was brought in from the hospital and carried through the abolition lobby on a stretcher.

The chamber was crowded in every corner when the tellers returned with the figures. The buzz of chatter which filled the air mounted in volume as they stood by the table, and as soon as the Clerk handed the voting paper to Mr de Freitas, one of the tellers for the amendment, everybody knew how the decision had gone.

A great cheer burst from scores of throats and excited members, particularly on the Opposition side, waved their arms in jubilation. Mr de Freitas, pale with suppressed emotion, led the tellers to the table and the Speaker had to call the House to order before the figures could be announced. There was a pause while Mr de Freitas struggled to control his feelings before he could announce the result.

As soon as members heard the vote, an even louder cheer rent the air and the chamber was aflutter with waving hands.[29]

The vote was 293 for the amendment, 262 against it. For many persons on the floor of the House and in the gallery, this moment was the climax of years of work and hope. But there also were those present who knew from bitter experience that a climax is not necessarily a consummation.

An analysis reveals that the abolitionist victory was indeed due to the desertion from the Government of some of its supporters, 48 of whom had joined an almost solid Labour and Liberal phalanx on this occasion.

DISTRIBUTION OF VOTE BY PARTY ON ABOLITION AMENDMENT (including tellers)

Party	Abolitionists	Retentionists
Conservative	48	256
Labour	242	8
Liberal	5	0

The Tory abolitionists included 17 M.P.s who had either voted for retention or abstained from voting on the unsuccessful attempt to get the House to approve an abolitionist motion a year before, as well as 18 Members who had been elected for the first time at the General Election of May 1955. Prime Minister Eden and ten other Cabinet members voted for retention, but nine ministers known to be abolitionists—including three of Cabinet rank (Selwyn Lloyd, Derick Heathcoat Amory, and Iain Macleod) abstained.

Who were these renegade Tories, and why should they have broken away from the majority of their colleagues on this issue? Neither question can be answered fully, although it is easier to

hazard an answer to the first than to the second. As already indicated, many were relative newcomers to the House. Only nine of them were members prior to 1950, 20 came into the Commons in the period 1950-54, and the remaining 18 had not celebrated their first anniversary as M.P.s. They were, on average, younger than their retentionist colleagues: three of them were in their twenties, 16 in their thirties, all but 12 of them under 50.[30] The majority could be termed post-war 'new Tories', conservative on economic matters but more liberal on social questions than many of their leaders and colleagues. Some of them, for example, were close to wealthy Conservative socialities outside of Parliament who were active in the National Campaign (known to some of the abolitionists as 'the friends of Princess Margaret'). If they cannot accurately be termed liberals, they can be called articulate and strong-minded, and quite a few of them later broke with the Government on its Suez policy.[31] For some of them, this first important free vote of the new Parliament was an opportunity to follow their consciences irrespective of their party's traditional stand, although later their leaders castigated them for acting without thinking out the consequences of a defeat for the Government and without a full awareness of the sentiment and power of their constituency associations.[32] Then too, some of these Conservatives were not full-blooded abolitionists. They simply had been persuaded by the debate that the abolitionists had the better case, or they had failed to be convinced that the Government's proposals for reform were anything more than tactical in nature, aimed at forestalling a head-on vote on a subject that had stirred the nation.

Clearly the Government leaders had not accurately judged the mood of their followers and now were faced with an embarrassing situation not unlike that which confronted the Attlee Government in 1948. Under pressure they had agreed to a free vote on capital punishment, and, perhaps in an overly sanguine moment, their chief strategist had promised that they would take action on whatever decision the House came to. But that decision went against the judgment and recommendation of the Home Secretary and most of his Cabinet colleagues, and they now were forced to shop around for a way out of the dilemma they had made for themselves.

Two choices were open to the Government. The first was to follow the expressed sentiment of the Commons and bring in a Government bill embodying the principle of abolition. Such a bill might or might not also include provisions concerned with reforming the law of murder along the lines of the original Government motion; but in any case it would carry the full weight of the Government's authority through all its stages, including the House of Lords. A second possibility would be to refuse to sponsor legislation designed

to implement a policy the Cabinet considered abhorrent, but instead to give facilities to the almost-forgotten Silverman abolition bill that had gone to the foot of the Private Member's Bills queue. To choose this second opinion would be to give the House a chance to carry an abolition bill through all its stages without stamping it with hypocritical Government approval. From the standpoint of the abolitionist faction, of course, this would be much the weaker alternative, because as a Private Member's Bill the Silverman measure would be deprived of the usual whipping machinery and, if it passed the Commons at all, would be quite vulnerable in its later stages in the Lords.

During the week following the vote the Cabinet took up the question several times, and there was evidence that some persuasion was required to produce collective agreement on what the next step should be. Presumably in the early meetings a strong case was made for the Government's duty to bring in its own bill (so convincing, in fact, that its semi-official newspaper even carried a discussion of the proposals under consideration),[33] but in the end this course was abandoned in favour of an arrangement by which the Silverman bill was to be given Government time for its further stages and free votes allowed throughout its course. It was felt that this choice would permit the Government to stand by its principles, avoid subsequent embarrassment, and still keep its word to the House of Commons. In the words of Sir Anthony Eden, 'It would not, in our view, be appropriate for the Government themselves to bring forward a measure which they have so recently advised the House against'.[34]

When this decision was announced to an expectant House of Commons, it left the abolitionists disappointed and resentful. They viewed it as a tactical dodge calculated to undermine the original vote and a betrayal of Butler's promise of Government action.[35] In registering these feelings, Opposition Leader Gaitskell avoided fanning the flames, however, probably because he feared that any attempt to use the issue to discredit Eden's leadership might cause some of the milder Conservative abolitionists to change sides or abstain in the critical votes that lay ahead. Some of his colleagues were less restrained in their comments and pointed out the enormous differences in the chances of success of Government-sponsored legislation and Private Members Bills. To them this manoeuvre was a piece of sharp practice which contrasted clearly with the more conciliatory action taken by the Attlee Government when faced with the same dilemma in 1948.[36] The Prime Minister clung to his view that the offer of Parliamentary time and a free vote was fair under the circumstances, although continued questioning drew from him a few more concessions: namely, that the committee stage of

the bill would be taken on the floor of the House, that the Government would refrain from putting pressures on its supporters during this stage, that no move would be made to complicate the choice by attempting to insert into the Silverman bill proposals for reforming the law of murder.

There was no question of constitutional impropriety here. Whether or not it is true that the Government was guilty of duplicity in its implementation of the Commons vote, it certainly could be accused of lack of foresight. Either through over-optimism or lack of proper staff work it had failed to consider the consequences of a Parliamentary defeat or think out what it was prepared to do to avoid the predicament its Labour predecessors had encountered eight years earlier. 'If, after all, they were going to ignore the vote,' commented the *Economist,* 'Ministers should surely have made this quite clear before or during the debate.'[37] By proceeding as they did, the Cabinet gave the impression to its supporters of ineptitude and to its opponents of double-dealing.

Soon the propriety of the Government's behaviour became a matter of sterile controversy and was replaced by speculation over a more basic question: Could the majority for abolition hold together through the complicated stages of legislation that lay ahead? It was, after all, one thing to get the House to agree to the principle of suspending the death penalty and quite another to translate that agreement into continuous support during the months required to turn a bill into an act. One false move on the part of the abolitionist leaders, one moment of weakness or forgetfulness among the followers, and the game would be lost.

The first hurdle was the Second Reading of the Silverman bill, for which the Government provided time on March 12. On that day the abolition bill, now bearing the names of eleven M.P.s of all three parties, was to be challenged by a group of Conservative backbenchers (headed by Sir Robert Grimston, chairman of the Conservative Home Affairs Committee), who had proposed an amendment the effect of which was to reject the Silverman bill outright. Unknown to both sides was the extent to which the 48 Government supporters who had voted for the February 16 motion would continue to stand with the abolitionists. It was rumoured that from 15 to 20 of this group were waverers who, under different circumstances than those which prevailed on the earlier vote, might be induced to conform to the views of the Conservative majority. Already, as a result of their recorded votes, they were under pressure from their constituencies to reverse their positions (though this pressure was less strong than it came to be later); and although the Government apparently did little to cajol them in this interval, they were made to feel the disapproval of their fellow backbenchers. For example, at a

meeting early in March of the 1922 Committee (the party's back-bencher organization), the abolitionists were told that a continuation of their action would put the Government in an extremely awkward position that might even bring on a constitutional crisis, an event which would serve only the ends of the opposition party. Several ardent abolitionists reportedly rose to say that on no account would they trim their consciences to appease the Government's dignity, but no one could be sure that some of the potential waverers were similarly inclined.[38] Under these conditions, it was all the more important that the abolitionist leaders did nothing to arouse strong partisan feelings in the presentation of their case.

The Second Reading debate was a quiet and undistinguished affair.[39] Obviously it suffered from the fact that the case had been argued to the point of exhaustion only a month before and nothing very new could be added. The Home Secretary conveyed the Government's opposition to the principle of the bill, while Silverman and his followers, in speeches that were models of temperate non-partisanship, reiterated the time-worn abolitionist themes. What counted that day was the division, not only because it would help determine the fate of the bill in the Commons, but because it was likely to reveal to the House of Lords whether or not the abolitionists had anything more than transient support. The outcome was a fairly comfortable majority of 24 for the Silverman bill (286-262). The margin of victory was seven less than in the earlier division, but it was due to absences abroad and accidental factors and not to shifts from one side to the other, as indicated by the fact that retentionist support was at the same figure as a month before. In spite of pressures, the Tory abolitionists had remained steadfast, and the bill was now fully launched.

Having failed to kill off the Silverman bill on its Second Reading, the retentionists concentrated their efforts on pushing a series of crippling amendments at the committee stage. They knew that without the aid of the usual whipping machinery the bill would be vulnerable to the corrosive effects of time, and they hoped that the bill's amateur organizers could not hold their majority together during days of prolonged argument, with votes liable to take place at any hour. Both sides were aware that in the vacuum created by the free vote situation, victory might well go to the group with the most effective private whipping organization. The Government itself was fearful of a drawn-out fight that might eat up valuable legislative time, and it was anxious to see some kind of 'usual channels' established for the conduct of the committee stage.

MARSHALLING THE FORCES

In the course of action on the bill no fewer than four informal

whipping organizations operated in the House of Commons.[40] Three of these involved Conservative Members, the other the Labour side. While there was liaison among the groups, there was no inclination to cross party lines to create a single abolitionist or a single retentionist organization.

On the opposition side of the House the whipping was organized entirely by the abolitionists (there being, after all, only eight Labour retentionists). Their chief of tactics was Kenneth Robinson, who brought to his task the experience of two years as a Government whip under the Attlee regime. His organization duplicated the regular Parliamentary Labour Party technique of assigning whips to small groups of the party's M.P.s along geographical lines; thus there were nine whips under his command. In the course of the committee stage every Labour abolitionist received weekly unofficial whips in quite the same manner as he was accustomed to for ordinary business, and although formally the party was expected to take no action on a free vote, it did make resources available that eased the job of the abolitionist whips. Their chief concern was to find out who the lukewarm abolitionists were and either to persuade them to be on hand for the forthcoming divisions or, in case of absence, to arrange pairing with retentionists for these occasions. At the same time Robinson was in continuous contact with both his Conservative counterpart (Peter Kirk) as well as the Conservative retentionists on questions of timetable priorities. By the time the really threatening amendments came up for debate a most effective whipping organization was in full operation.

The Tory abolitionists developed a similar organization under the leadership of Angus Maude and Peter Kirk. Their particular task was to hold together the 48 key members throughout all stages of the bill—to inform them, to make sure they went into the proper lobbies at the right time, and to work up a strict system of pairing. Perhaps their biggest problem, however, was to convince their followers to accept the overall leadership of Sydney Silverman. To swallow this leadership was no easy thing for any Conservative, for among Government backbenchers Silverman had gained a singular reputation as a vitriolic and effective Tory-baiter. It was a measure of Silverman's skill and self-restraint on this issue, and of the dedication to their cause of the small band of Conservative abolitionists, that this obstacle was successfully overcome and effective co-operation between Labour and Conservatives was maintained throughout the spring of 1956.

On the opposite side of the issue a Conservative retentionist whipping structure came into being to fill the vacuum created by the removal of the Government's control of its followers. (As will be shown below, however, the Government, though supposedly neutral,

urged the adoption of every amendment during the committee and report stages). A group of about a dozen firm supporters of capital punishment, under the leadership of John Eden and Oliver Crosthwaite-Eyre, set up a complete whips' office in an interview room in the Palace of Westminster and met regularly to plan strategy. Like its counterparts among the abolitionists, the group issued weekly whips (paid for out of their own pockets) to its known supporters, divided up the Parliamentary day and posted members in shifts to follow the debate from the door of the Commons, informed their followers of happenings and impending divisions, arranged for pairs, and provided tellers to insure that divisions always took place. In this way the whips were able to maximize retentionist strength and hopefully to catch their opponents unawares. Though more amateurish than the abolitionist organizations, the group was successful within limits and generally able to prevent a complete rout.

The fourth Parliamentary force—it cannot be termed a whipping structure—was a retentionist splinter group of about a half-dozen Conservatives who followed the independent course set by Sir Hugh Lucas-Tooth. Sir Hugh, who was Under-Secretary to the Home Office during 1952-5, took issue with the Government's strategy and aimed instead to get the House to accept the Silverman bill with several amendments designed to retain hanging for the few crimes most feared by the public, in the hope that such action would put an end to the Parliamentary controversy and allow capital punishment to lapse into disuse over the years.[41] While small in number, his group of moderates were vocal in debate and active in forcing the issue on a number of debates.

By the time the House began the committee stage of the Silverman bill late in April, over fifty amendments had been proposed—all but one by retentionists. Allowing for some duplication, the proposed changes fell into three categories:

1. Those amendments which would, if accepted, delay the application of the abolition principle until some distant time—in most cases until January, 1961, in one amendment until another General Election was held.

2. Those which would keep the death penalty for certain crimes, including the following: murders committed while committing a felony; during the course of a burglary, robbery, or while attempting to avoid arrest for such offences; in escaping from prison; while serving a life sentence; for any second murder; for murder caused by or while carrying offensive weapons; for murder by poisoning; in the course of rape; with the purpose of obtaining sexual pleasure; for the murder of a child; the killing of a police, prison, or judicial officer (active or retired); and finally, 'for any premeditated murder'.

3. A miscellaneous group, including amendments that would make abolition inapplicable to Scotland, exclude from the operation of the act capital offences covered by acts applying to the armed services, substitute imprisonment 'for the lifetime of the prisoner' for the usual sentence of life imprisonment (whereby most murderers are released in less than ten years), and introduce whipping as an added penalty for certain violent types of murder.

Taken separately, none of these proposals would negate entirely the intention of the bill which had received its Second Reading; but taken altogether, or even in a combination of several of them, their cumulative effect would be to leave the scope of capital punishment no different from what it was at the moment.[42] The purpose of some of them was quite transparent (e.g., those delaying the application of the act, those excepting all premeditated murders) and caused the abolitionist leadership no anxiety. But others—particularly the one applying to the murder of police and prison officers—gave greater cause for concern, especially since it was known that this question continued to disturb some of the moderate or weak abolitionists. They knew that it would take changes of heart on the part of only a dozen M.P.s to reverse the earlier decision. As the committee debate began, hopes and fears ran high that the bill still might be emasculated by the passage of even a handful of the numerous amendments on the Order Paper.

The amendments were considered on four days spread over two months.[43] On the first day the House debated for two hours and forty minutes the amendment, moved by a Labour retentionist, that would have retained capital punishment in cases where the jury found the killing to have been a deliberate and calculated act. When finally the amendment was killed by a vote of 246 to 226, the result was hailed with delighted acclaim by the abolitionists, who took it as an omen of how the voting would go on the other amendments aimed at retaining hanging for certain varieties of murder. The omen proved to be correct, for with one exception the House proceeded to vote down by safe (if not substantial) majorities the rest of the amendments calculated to water down the principle of abolition.[44] The exception occurred when on a motion by Sir Hugh Lucas-Tooth the House unexpectedly voted (by a margin of four) to accept an amendment providing for the retention of the death penalty in cases of murder committed by persons already serving a life sentence. This single break in the string of abolitionist successes was due to the failure of the whips to round up enough of their supporters for the division and not to a change in Members' sentiments.[45] Later, at the Report Stage, in a bit of fast Parliamentary footwork that found Sydney Silverman moving the very amendment he wanted the House to reject, the Lucas-Tooth amendment was

deleted by a comfortable margin (162-139). Much of the credit for this skilful piece of navigation belongs to the two abolitionist whipping machines, who were able to muster strong and weak followers at the crucial divisions, and to Silverman himself, who never lost his Parliamentary sense nor failed to keep his self-control.

Late in the evening of June 28, 1956, Silverman, seconded by Nigel Nicolson, rose to move the Third Reading of the Death Penalty (Abolition) Bill, and by the now steady margin of twenty votes the House of Commons gave its final approval. This time the jubilation of the abolitionists was mild and restrained, perhaps due to exhaustion, but equally because they knew that the bill was now on its way to the Lords.

The foregoing developments did not take place without considerable reference to outside events and extra-Parliamentary opinion. If Members of Parliament held stage centre during the course of the Silverman bill, they were still exposed to frequent prompting from the wings. Campaigning for and against the principle of abolition continued unabated through the spring and summer of 1956, and as in the arguments put forward in the debates discussed above, much attention was devoted to making an impact upon the position of the House of Lords.

It would be misleading to conclude that because no Campaign for the Retention of Capital Punishment flourished during this period all pressure and propagandistic activity was on the side of the abolitionists. Important groups continued to pass resolutions and exert their influence privately, and the retentionist press took steps to arouse its readers to action against the Silverman bill. Among the groups that pressed for the retention of the existing capital punishment policy, two types can be distinguished: those which believed that their members would be adversely affected by the passage of an abolition bill, and those which, while themselves less likely to be directly affected by abolition, were nonetheless ideologically opposed to any such legislation. Typical of the reactions of the self-interested groups were the Prison Officers' Association and the Prison Clerks' Association, each of which sent letters to the Home Secretary registering their apprehension over the early stages of the Silverman bill and insisting that should the bill become law, new legislation be introduced providing special compensation to widows and dependants of prison officials killed or assaulted in the line of duty. Such pleas were frequently reported in the press.[46] Typical of general ideological opposition to the threatened change in the law was the reaction of the 2,500 delegates to the Annual Conference of Conservative Women's National Advisory Committee, who approved overwhelmingly a resolution welcoming the amendments to the bill and urging Conservative M.P.s 'to continue

their efforts during further stages of the Bill, in order that adequate attention may be given to the views of many women who are strongly opposed to the total abolition of the death penalty'.[47] A Conservative abolitionist M.P., Mrs Evelyn Emmet, who attempted to present the other side of the argument, was booed loudly and subjected to slow hand-clapping that forced her to sit down. (Indicative of the fairly strongly partisan character of the issue was the fact that three months earlier the annual meeting of the National Conference of Labour Women had passed a resolution urging complete abolition and calling upon the Parliamentary Labour Party 'to use its utmost influence in this direction'.[48]) The feelings of the Conservative Women were not out of keeping with sentiment in the constituency parties, as will be shown in a later section.

Both in their editorial views and in their news reporting, the retentionist newspapers kept the arguments against abolition before their readers and Parliament. They insisted, for example, that the vote of February 16th was 'a triumph for emotionalism', attributable to the 'heavy propaganda barrage set up by the abolitionists'.[49] Several maintained that the House of Commons was still obliged to follow the content rather than the trend of public opinion, and early in the course of the Silverman bill they made overtures to the House of Lords to right the balance in favour of mass opinion. When a woman shopkeeper was stabbed to death three days after the first vote in the Commons, the news received front-page banner-headlines in two widely circulated London dailies (MURDER ON THE THIRD DAY, announced the *Daily Express*; FIRST 'I CAN'T HANG' MURDERER, echoed the *Daily Mail*), whose editorial writers treated the event as proof of the regressive effect of the Commons decision.[50] Those newspapers which preferred to conduct their own polls instead of relying on Gallup continued to find seven out of every ten Englishmen opposed to any change in existing practices, thus revealing in its true light 'the attempt to stampede Parliament'.[51]

Pressures were more organized on the abolitionist side. The two major groups active in this area—the Howard League and the National Campaign for the Abolition of Capital Punishment—continued in their separate but coordinated ways to give the Silverman bill all possible support, with the League utilizing its more expert knowledge of the subject and its contacts with sympathetic M.P.s and the National Campaign focussing on general propaganda and the large gesture. The League was particularly active in providing abolitionist M.P.s with factual information and legal advice with which to counter the numerous amendments for the bill's committee stage. For example, League officials circulated to all M.P.s who had voted for the Second Reading of the bill a version of a memorandum

on capital punishment submitted by the noted criminologist Professor Thorstein Sellin, of the University of Pennsylvania. With the National Campaign paying the expenses, the League invited four distinguished experts from countries where capital punishment had been abolished to discuss their countries' experiences with a large group of M.P.s brought together by the Parliamentary Penal Reform Group. The experts (among them the Attorney-General of Norway and the Secretary General of the Belgian Ministry of Justice) answered a barrage of questions on those aspects of abolition that were likely to prove nettlesome during the committee stage of the bill: e.g., the treatment of convicted murderers (especially psychopaths), the safety of police and prison officers, and the incidence of armed robbery and violence in abolitionist countries.[52] Thus forearmed, the abolitionists were seldom caught without an answer when these topics arose in the form of amendments.

As the Silverman bill was carried toward its climax in the House of Commons, the 35,000 members of the National Campaign were urged on to increased activity—to write their Members, to write their favourite local newspapers, to persuade their neighbours. At a mass meeting in Royal Festival Hall on May 24th, which included talks by the four foreign experts who had previously spoken privately to M.P.s, the abolitionist leaders sought to make known to a wide public the facts on some of the questions that still seemed to be arousing disquiet—the possibility of alternative sentences, the fate of police and prison warders, the behaviour of released murderers, etc. Attempts were made to counter statements of noted retentionists soon after they were made. For example, in reply to statements made by Home Secretary Lloyd-George about those murderers who had been refused reprieves, Arthur Koestler, writing in the *Observer* under the pseudonym 'Vigil', compiled a complete record of the character and crimes of the eighty-five persons executed in the five years 1949-53. This latter-day Newgate Calendar was later made into a pamphlet and sent to all M.P.s during the committee stage of the Silverman bill. The increased sensitivity of the retentionist forces to the charges levelled by Koestler was revealed in the attempt of a Home Office spokesman in the House of Lords to convey the impression that the writer had purposely left out a part of the instructions to prison governors in order to give the impression that the Home Office had covered up an unpleasantness in the hanging of Mrs Edith Thompson in 1922. This charge was made just prior to the Second Reading. Several days afterwards it was discovered that the Home Office had never made public the clauses that it accused Koestler of suppressing, much to the embarrassment of the retentionists who had joined the attack on the writer and to the delight of abolitionists, who made

the most of the red herring. What might have been the beginning of a campaign to discredit the motives of the leaders of the National Campaign thus backfired and reflected on the motives of its sponsors.[53]

DECISION IN THE LORDS

It was against this background that the House of Lords prepared to take up the Silverman bill early in July. As in the Commons, the peers were to have a free vote on both sides, although (again as in the Commons) the Government reserved the right to advise the chamber as to the proper course of action. The Lords could conceivably do one of four things: (1) accept the Silverman bill as passed in the lower house; (2) reject the bill entirely on its Second Reading, thus returning it to the Commons and risking the invocation of the Parliament Act; (3) give the bill a Second Reading and then amend it substantially at the committee stage in the hope that the lapse of time would be sufficient to permit second thoughts on the part of many of the abolitionist M.P.s, who would then accept the compromises they turned down in the spring of 1956; or (4) reject the bill on its Second Reading but bring in their own bill for amending the law of murder. The first alternative seemed highly unlikely, given the known views of many peers. The second one was a distinct possibility, although under the Parliament Act of 1949 the House of Commons could override the Lords decision by re-passing the Silverman bill after the lapse of one year (providing the Government continued to give it facilities). It was known that a number of moderates in the House of Lords favoured either the third or the fourth alternatives. The trouble with them was that either course would put the Lord Chief Justice and many of the Law Lords in difficulty, for when a compromise bill passed by the House of Commons in 1948 was presented to the Lords, Lord Goddard and the others had come down strongly against the principle of categories of murder and legislative interference with the Royal Prerogative. Thus as the new bill went over to the Lords, no one could be quite sure of the action it would take, or exactly what the consequences of its action would be.

The abolitionists were cautiously optimistic. They found it difficult to believe that the House of Lords would reject a reform measure passed by the House of Commons in two Parliaments, one Labour, one Conservative. They took comfort from the fact that the recent Parliament Act had reduced from two years to one the time that the Lords might delay legislation that had continued support in the elected chamber. Most of all, they were aware that the Leader of the House of Lords, the Marquis of Salisbury, was concerned over the survival of the upper chamber and anxious to

get Labour support for his cherished reforms of the Lords. Although the Labour Party had not formally endorsed the principle of abolition, it was common knowledge that if the Lords were to throw out the Silverman bill, new hostility to the peers would develop among Socialists and endanger the future of that House.

It must be remembered, however, that a situation brought on by the rejection of the Silverman bill by the Lords would not fit the definition of a 'peers versus people' controversy. Such a controversy only arises (as it did in 1910) when the upper house throws out a bill passed by the Commons at the urging of the Government and with an acknowledged measure of popular support in the country. Neither element was present in 1948 or in 1956, and Labour abolitionists knew that to go too far toward picturing it as a clear-cut fight between the representative chamber and a vestige of feudalism would only alienate many of their Conservative supporters.

The two-day debate in the House of Lords was notable not only for the quality of the argumentation but for the large number of peers who attended and participated.[54] To the usual number of 'regulars' was added over one hundred 'back-woodsmen', peers who seldom if ever put in an appearance at Westminster. It was suspected that many of them would look to Lord Salisbury for their cue, for he was then at the apogee of his power and influence, due not only to his position as Leader of the House of Lords but to the impressive historical and moral leadership he commanded.[55] Dozens of Lords took part in the debate, and there were strong performances by Lords Templewood (who moved the Second Reading of the Commons bill), Kilmuir (the Lord Chancellor and a former Home Secretary, who opposed it), Goddard (the Lord Chief Justice, who as in 1948 did not hesitate to dwell on the gruesome details of murder cases he had presided over), and Salisbury. The arguments for and against the death penalty did not differ substantially from those uttered in the Commons or by the Lords themselves on an earlier occasion. Three sets of remarks were noteworthy for their political significance, however. One theme, dwelt upon by a number of retentionist peers, was the alleged smallness of the margin of victory the abolitionists had managed to achieve in the lower House. It was argued that the Lords need feel no compunction in rejecting legislation that had failed to sweep a large majority of the Commons with it. A second group of remarks, of which the long peroration by Lord Salisbury was typical, raised the general question of the theory of representation the Lords ought to follow. Lord Salisbury's position has been summed up in the following way:[56]

> This is a great issue. Only the people should decide great issues, unless they arise so suddenly that there is no time to consult them.

In this case there was plenty of time, but the advocates of abolition failed in their duty; they did not consult the people. There is good reason to believe that if the people had been consulted, they would have objected strongly. So abolitionist Members are not only ignoring their electors, but defying them. The public must be trusted all the time, and we must be guided by their views when they are ascertainable, whether we personally consider them right or wrong. Anything else makes nonsense of our democracy.

Thus, according to the Government leader, in rejecting the abolition bill the House of Lords would be fulfilling its task of virtually representing the British people in default of proper consultation by their elected representatives.[57] A third note was struck by the retentionist leadership when Lord Salisbury hinted broadly that if his colleagues were to throw out the Commons bill, the Government was prepared to bring in its own legislation to amend the law of murder and possibly reduce the existing number of capital offences. Such a course had been rejected by the House of Commons five months earlier, but to promise it now might possibly lay to rest the fears of many uncommitted peers that a vote against the bill would quash all penal reform for some time to come. They hoped that these three special arguments, as well as the standard retentionist themes, would be sufficient to convince the majority of the peers that their best course would be to take the advice of the Lord Chancellor and the Leader of the House to reject the bill and return it to the Commons.

The House of Lords did indeed follow this advice and rejected the Silverman bill by a margin of 238 to 95 votes—easily the largest turnout on a division in recent times.[58] Despite the effect of the vote, abolitionist leaders hailed the increase in the number of their supporters, three times as many as in 1948, compared to a rise in retentionist strength of a bare 25 per cent. Not only did the abolitionist lobby contain a goodly sprinkling of Conservative peers; in contrast to 1948 it included four of the eight Law Lords, both Archbishops, and eight bishops (with only one bishop voting against the bill).[59] Whatever small comfort the abolitionists took from the fact that theirs had been a high quality lobby could not obscure their qualms over the future of the vetoed measure, now that the Lords have given the Commons an opportunity for the much-advertised 'second thoughts'.

THE GOVERNMENT RECOVERS THE INITIATIVE

The next step was up to the Eden Government. Realistically, it seemed to be faced with two alternatives: either to invoke the Parliament Act after the constitutional interval had lapsed and give

Silverman facilities to reintroduce his bill for another free vote, or bring in its own legislation retaining hanging but amending the law of murder, impose whips, and deny facilities to Silverman for a second try. The former course would carry out fully the Cabinet's original promise, and it would placate abolitionist misgivings over the Government's behaviour in the controversy. To choose the latter course, on the other hand, would undoubtedly please the moderates but make the Government the target of more criticism from the Opposition, from some of its own supporters, and from the country; and it would put the small band of Conservative abolitionists in the very embarrassing position of having to choose between conscience and party loyalty.

As in the earlier round, much would depend on the behaviour of the forty-odd Tories who had defected from standard Conservative views. In July 1956 no one quite knew whether—or for how long—they would be able to resist the combined pressures of aroused constituency opinion and Ministerial 'persuasion' to accept some kind of a compromise bill as the price of cutting their ties with the Labour abolitionists. For the Silverman strategy to work, this Tory cave would have to remain firm for at least another year and through another gruelling series of tests. Even a single defeat for the abolitionists on a future committee stage of the bill would be as bad as outright rejection on the Second Reading, since the Parliament Act could be invoked only if the bill went through the Commons a second time unchanged in any way.[60]

The Government now was anxious to let the controversy simmer down, and it parried all abolitionist attempts to get it to declare its plans immediately.[61] The summer recess of Parliament handily provided an interval during which pressures could be released and extremism on both sides allowed to subside. The action of the House of Lords had returned the initiative to the Government, and this time (for once) it seemed capable of making long-range political plans. The summer interval was actually a time of public quiet and intense private activity, chiefly on the part of the retentionist forces.

There was really not much the abolitionists could do, for the next step belonged to the Government. They could bring forward no new arguments for their side. They found no occasions around which to launch a new propaganda campaign, since as the result of an unannounced moratorium no one had been hanged in Britain since August 1955.[62] The press and the public were beginning to show signs of boredom with the subject. Until the Government made known its plans, about all the organized abolitionists could do was to muster opposition to any course of action short of allowing the Silverman bill to be reintroduced under the Parliament Act. Their attack followed two lines. The first was to press the case that the

Government was under a moral obligation to support the decision of the House of Commons and not to allow the nation's policy on this issue to be decided by a non-elective, unrepresentative body. Their second theme emphasized the clear impossibility of framing a compromise bill that would hold up under analysis and satisfy both Houses of Parliament. The Labour Government had tried it in 1948, the Gowers Commission had rejected it after exhaustive investigation, and the present Government had often stated that the establishment of categories of murder was unrealistic. 'Any compromise now would not only be in defiance of principle: it would be in flat and flagrant contradiction of all the evidence'.[63] Early in the autumn of 1956 the Prime Minister was presented with a petition embodying these views, circulated by the National Campaign and signed by 2,500 prominent Britons in the professions, the arts, the social services, and trade unionism.[64] By that time, however, the Government had already set a very different course.

By mid-summer it was common knowledge that the Government, urged on by its supporters inside and outside Parliament, was working on its own bill for the next session.[65] How the anticipated measure would relate to the status of the Silverman bill was not revealed, although it was assumed that this development would foreclose any hope of Government facilities for the abolition bill. The big question remained the position of the Tory abolitionists. If they stood firm in support of their earlier views, they could cause at the least an internal crisis within their party and very possibly a defeat for the Government on what was now to be a matter of official policy. It was incumbent upon the leaders of the Government to take the views and position of the Tory defectors into account in drafting the new measure, and if possible to persuade them to support the kind of compromise they had resisted earlier.

Throughout the preceding six months the Tory abolitionists had been subjected to pressures, sometimes direct, sometimes subtle, from their constituencies and their party leadership. They had resisted them almost to a man. The strong advocates of compromise now hoped that this band of 48 M.P.s would give way to the erosion of time and mounting pressure from all levels of the Conservative party organization. During the summer recess of Parliament, the abolitionists became the target of increasingly strong pressure from three sources: their constituency parties, the party's leadership in the Commons, and the Conservative Annual Conference.

Undoubtedly the proponents of capital punishment made up a majority in almost every constituency in Britain, whether predominantly Conservative or Labour in its political coloration. Yet the issue loomed larger in the Tory districts, and sensitivities to local pressures were much greater among Conservative M.P.s than

among Labourites.[66] This may have been due partly to the fact that in general local party organization was more developed on the Conservative than on the Labour side, where in many cases constituency parties were only a branch of the local trade union structure. Where local Labour parties were well-developed they tended to be left-wing and 'intellectual' in character and very apt to favour abolition. It surely was due to the observed tendency for local Conservative parties to be farther to the right on most issues than the party's national leadership; at this level hanging had always found enthusiastic support, and it has been with difficulty that Conservative Governments have resisted local party demands for the re-introduction of corporal punishment. To many local Tory stalwarts, the campaign for abolition was a strictly left-wing Socialist affair, and the Conservative M.P.s who had supported the Silverman bill were dupes of a Socialist trick to embarrass the Government. As vote after vote took place on the stages of the bill, resentment against the Tory abolitionists gathered momentum in their constituencies. There were irate letters; there were the usual threats to transfer local support to another candidate at the next election; there were cancellations of party subscriptions in the constituencies represented by the abolitionists; most effective of all, perhaps, there were visible signs of withdrawal of confidence in their M.P. by the executive committees of some of the local parties. The maverick M.P.s came to appreciate the full extent of the courage they had shown on a 'free vote'.

Perhaps the most well-known instance of a clash over capital punishment between a sitting M.P. and his local party was the case of Nigel Nicolson, who represented the ultra-safe Conservative constituency of Bournemouth East and Christchurch.[67] Mr Nicolson had voted for the ill-fated abolitionist motion fn February 1955 but had experienced no difficulty over it in his constituency and had been returned to Parliament in the General Election by a handy margin. When he chose to follow the same course by supporting the abolition amendment in February 1956, he took pains to announce that to the best of his knowledge he was following the opposite course from that approved by the majority of his constituents.[68] This act was greeted by a flood of letters from Bournemouth, most of them accusing Nicolson of failing to represent their views and interests for the sake of following a merely personal whim. In his private and public replies Nicolson fell back on a basically Burkean interpretation of the duties of a Member of Parliament, by which the Member goes to Westminster 'to speak and vote in what he conceives to be the national interest, having heard all the arguments for and against a particular line of action, and not simply to record decisions arrived at by a cross-section of

his constituents'.[69] At the same time Nicolson was getting pained reactions from the local Conservative association. Just before the Second Reading it was reported to him that all but two of the association's thirteen branches had come out strongly against abolition, some by margins of ten to one. Local party leaders begged him at least to abstain from voting in the later stages of the bill. Like his colleagues, he chose to act counter to this advice, and even seconded the motion for a Third Reading of the Silverman bill. His relations with his constituency party got no better as the bill moved up to the Lords. In the end continued contact with his constituents (plus perhaps his awareness that M.P.s with margins of over 10,000 votes are often expendable in the eyes of the party leadership) convinced Nicolson that he could find it in his principles to accept a compromise Government bill if it were brought forward. As will be seen shortly, he was to become the first of the Tory abolitionists to recant publicly.[70]

Most of the 48 dissenters were treated similarly by their local party associations, and all of them came under increased pressure from their party's leadership in the House of Commons, notably from Chief Whip Edward Heath, who was given the task of extracting pledges not to resist the impending Governmental legislation on the death penalty. We do not and perhaps cannot know all that transpired at No 12 Downing Street during the summer interval, but it is common knowledge that the Chief Whip entertained almost all of the Conservative abolitionists in this period. His first approach was to show each of them the proposals for a new act that the Home Secretary and his staff were working on, take some of their suggestions, and strongly urge that they accept this half-loaf as the best they could get out of the situation. Then the Chief Whip reportedly summoned specially all those abolitionists who were sitting for safe constituencies and therefore less personally indispensable than those who were occupying marginal seats.[71] They were addressed in stronger language, told of the embarrassment they had caused the Government in the past, and warned that their decision on the forthcoming Government measure would very likely affect their future status in the party and in the Commons. By early autumn, there were indications that several dozen members of the group—enough to swing any vote in favour of the Government—had reconsidered their views and were now prepared to support a Government compromise bill.

If the waverers needed further persuasion to make the break with the Silverman forces, the Conservative Party's Annual Conference in October provided the occasion. A total of 33 motions dealing with capital punishment were tabled for the conference—more than for any other subject. Roughly half of them simply would have

retained the death penalty in its existing form, while the other half (including the one chosen by the platform for discussion) called for resolute opposition to total abolition but urged that the law of murder be amended so as to limit the imposition of the death penalty.[72] It was clear that the party leadership wanted the latter type of resolution passed, and after a noisy debate marked by expressions of disgust over the earlier behaviour of the Tory abolitionists and paeans of praise for the House of Lords, the Conference agreed to a motion in favour of the middle way advocated by Home Secretary Lloyd-George.[73] The Government found this platform useful for engineering consent for its position both among 'leftish' malcontents (who had favoured the Silverman bill or something close to it) and 'rightist' stalwarts (who wanted, if anything, capital and corporal punishment extended to crimes other than murder).

The first public break in the solidarity of the Tory abolitionists came on the eve of the Conservative conference, when Nigel Nicolson announced to his constituency association that he had decided to modify his attitude. The explanation he gave for his decision reveals the painful clash of personal and political values:

> There is still a great fear that if the death penalty were to be removed innocent human lives would be in greater danger. Personally, I think this fear to be groundless, but I cannot be certain that I am right.
>
> So long as there is no certainty on my part, nor evidence of change of mind on your part, I think it would be wrong if I were to continue to use my vote in Parliament against the wishes of those who sent me there.
>
> On the other hand, I believe that our debates in Parliament and outside have already shown that public opinion would be ready to accept some amendments to the law of murder, and abolition of the death sentence in cases where the sentence is rarely carried out today. If the Government were to bring in a Bill of its own to give effect to such changes, I should have no hesitation in supporting it.[74]

This was an ominous announcement, but not a completely dispiriting one, for no other Tory abolitionist followed it with a similar declaration. The hope still lingered among abolitionist leaders that Nicolson's switch was the result of special pressures at Bournemouth and not the harbinger of a wholesale surrender to the retentionists.

The Government's strategy came into the open late in October, when Sir Anthony Eden told the Commons that his Government had decided to introduce in the next session a bill of its own designed to curtail but not abolish capital punishment and that it would not find Parliamentary time, in the coming session as in the

last one, for the Silverman bill.[75] Amid angry bursts of protest from the Opposition benches, the Prime Minister indicated that if the Silverman bill were to advance at all thereafter, it would have to do so as a Private Member's Bill (on which the Government would permit a free vote). To the Government, the decision was a fair one, fully consistent with the purposes the Parliament Act had been intended to serve. It was asking the House to examine its own bill aimed at satisfying majority opinion in the country, and it felt no constitutional obligation to secure enactment of a bill it had always opposed. To the abolitionists, this action appeared a breach of constitutional propriety and a violation of the Government's original promise to give parliamentary time to 'the later stages' of the Silverman measure (which they interpreted as extending into a second session). They did not deny the Government's right to bring in its own bill; what they challenged was its loading the dice against a recent decision of the House of Commons by forcing the abolitionists to work through the extraordinarily difficult and risky channel of the Private Member's Bill, whereby 'whether the House of Commons exercises its rights under the Parliament Act shall depend not upon its judgment but upon the luck of the draw'.[76]

The Government's initiative in the matter put the abolitionists in a difficult spot, from which it seemed almost impossible to extricate themselves. Their chief fear was that by bringing forward their bill early in the session and mobilizing their formidable resources to press its passage, the Government leaders might be able to have the bill on the statute books before the Silverman measure could even start its career.

In such an event what would the abolitionist do—vote for a reform that falls short of abolition? Some abolitionists, and particularly some Tory abolitionists, might do so preferring some reform for certain to the risk of no abolition at all. Some might do so on the ground that it is better to make haste slowly in view of opinion within the Tory Party.[77]

But even if the Government did not hurry its bill forward, Sir Anthony's terms would confront the Silverman forces with a much stiffer task than they had encountered in the previous session. The normal Private Member's Bill procedure, which requires a committee stage off the floor of the House, would be a much more hazardous procedure than the one followed when the Silverman bill went through the Commons the first time. The possible snags would be legion. For example, amending the bill would be less difficult, and any substantive amendment to the bill would prevent it from proceeding under the terms of the Parliament Act—its only

hope of success in the face of continued hostility by the Lords. Moreover, because the time for Private Member's Bills is strictly limited in the House of Commons, the bill might encounter great difficulty in finding a place in the programme of the House. Finally, the prospect of two bills on the same subject before the chamber, one a Government measure, the other a private Member's measure, would inevitably raise knotty procedural problems, few of which were likely to be resolved against the wishes of the Government.

Faced with such forebodings, the abolitionists were forced to fall back upon two hopes: that there remained a majority for abolition in the House which would not give way under these pressures, and that through success in the balloting for Private Member's Bills they would be able to bring in a bill early enough in the session to compete with whatever compromise measure the Government was preparing to launch. Both of these hopes were badly shaken by events in November. Early in the month the Government published the text of its Homicide Bill. The bill's five sections constituted a two-pronged reform of the law of murder (and a double dilemma for the abolitionists). The first part of the bill would make changes in the existing law very much on the lines recommended by the Gowers Commission and the Conservative Inns of Court committee; abolishing, for instance, the doctrine of 'constructive malice', and bringing into English law the Scottish doctrine of 'diminished responsibility', applicable to people suffering from an abnormality of mind that falls short of insanity. The second part set up a distinction between 'capital murders', which would be subject to the death penalty, and other murders, for which it would be abolished. The latter section was, in effect, the Silverman bill plus most of the amendments to it that had been defeated the previous spring. By combining in a single package the widely agreed-upon reforms of the murder law and the more controversial provisions establishing degrees of murder, the Government had managed to throw a formidable obstacle in the path of any independent abolitionist efforts.

The two sections of the bill may not have been organically connected, but their coupling had important constitutional consequences, as Sydney Silverman was quick to note.[78] The arrangement made it easy to circumvent the terms of the Parliament Act. That act provided that a bill must be presented to the House of Lords a second time in substantially the same form as on the first occasion. Should Part 2 of the Homicide Act (dealing with categories of murder) be passed without amendment it would be exempted from the provisions of the Parliament Act and the Lords could accept or reject it in the ordinary manner. But if, as the abolitionists hoped, Part 2 were amended by the Commons so as to

exclude the proposed categories of murder and be converted into another version of the Silverman bill, it still would fall outside the provisions of the Parliament Act because it included the other four parts dealing with the law of murder and other minor matters. Again the Lords would be free to deal with it as they chose. Only if Part 2 were presented as a separate measure could the Lords' veto power have been denied; and this Government had refused to do.

The abolitionists suffered a second procedural blow when on the balloting for Private Member's Bills that took place at the beginning of the new session, Labour M.P.s fared quite badly. Of the twenty names drawn—from 332 entries—17 were Government supporters and only three were Labour.[79] Worse still, the Labour members drew only the eighth, eighteenth and nineteenth places.[80] Under normal Parliamentary conditions, only Members who draw the first six places can be assured of having their measures debated. Several weeks later it was announced that the winner of eighth place, Miss Alice Bacon (Labour), would use her time for the introduction of a bill substantially the same as the Silverman measure. Debate on this bill was scheduled for February 1st—two-and-a-half months after the date on which the Government's Homicide Bill was to have its Second Reading. Too late the abolitionist leaders realized that they had made a costly procedural mistake. They should have arranged for hundreds of Labour M.P.s to enter the competition and thus increased the statistical probability of winning a higher place in the competition.

In what appeared to abolitionists unseemly haste that betrayed the Government's true intentions, the Homicide Bill came up for its Second Reading a bare week after it had been introduced.[81] The bill failed to fill the House either with Members or emotion, partly because the international situation (the Hungarian and Suez crises) had drawn off much attention, partly because the Opposition had previously announced that it did not intend to divide the House at this stage. For the abolitionists to succeed in rejecting the bill outright on its Second Reading would spell doom for the non-controversial elements in it without giving much hope that these provisions might be resurrected later. Instead, Labour's strategy was to concentrate on eliminating the abhorrent clauses at the bill's committee stage.

The Home Secretary began his remarks with a rare admission in debates on capital punishment, namely, that the subject indeed fell within the purview of the Government's powers.

> The Government carry the responsibility of the maintenance of law and order. That is the first and fundamental duty which rests on any Government . . . The Executive has the duty of advising

Parliament what laws it believes necessary if the Queen's peace is to be maintained.[82]

As in the case of the Attlee Government's compromise bill of 1948, the Government had put on whips to insure support of its official policy. It had not done so nine months before, when a Government motion had gone down in the first of a series of defeats. The clear implication was that the internal strains in the Parliamentary Conservative Party were now much less severe than on the previous occasion, and the imposition of whips had brought on no local crisis.

Little issue was taken with the proposals aimed at reforming the law of murder, such as the abolition of the ancient doctrine of 'constructive malice' and the importation from Scottish law of 'diminished responsibility' as a test for criminal responsibility. What divided the Members (and by this time the political parties) was the merits of the second part of the Homicide Bill, which established the concept of capital and non-capital murders. The effect of the proposed change, according to Home Secretary Lloyd-George, would be to take out of the category of hangable offences 'those homicides about which opinion has long been uneasy': homicides which are murder only by virtue of the doctrine of constructive malice; homicides by people who, though not insane, are gravely abnormal; homicides under severe provocation by words alone; and homicides in pursuance of a suicide pact, while retaining the death penalty chiefly for murders committed by professional criminals, such as murders of policemen and prison officers, murder by shooting or causing an explosion (methods which are especially dangerous and associated with gang warfare), and multiple murders. If this division of crimes could be said to have a rationale, it was given by the Home Secretary in these words:

> In this way we keep capital punishment where it is most needed and most effective; that is, in the main as a deterrent against professional criminals carrying and using lethal weapons, and as a protection for public servants who are particularly exposed to attack.[83]

The probable effect of such a change in the law, Major Lloyd-George added, would be to reduce the number of capital sentences by about three-quarters.

The Opposition spokesmen divided their time between criticizing the Government's motives and the bill's provisions. Led by Anthony Greenwood and Sydney Silverman, they characterized the Government's action as a breach of faith and a denial of the fundamental

truth (in Silverman's phrase) that 'The will of the people is the will of the House of Commons'. They insisted that the justice would be done only if the Government were to permit a separate abolition bill to come before the House for another test. The Homicide Bill as it stood was but another attempt to do something that had been rejected no fewer than ten times in the preceding ninety years—to graft on to the British legal system the concept of degrees of murder. Such a proposal had been declared to be unfeasible by the Gowers Commission, the Lord Chief Justice and most of the other Law Lords, and various students of jurisprudence and criminology; and it had been turned down with derision by the House of Lords eight years earlier. Emulating the performances of Sir Winston Churchill and his colleagues in the 1948 debate, Labour abolitionists seized upon the provisions of the bill to show mockingly how absurd or unjust their application might become. ('If only Ruth Ellis had used a hatchet she would have been all right under the right hon. and gallant Gentleman's Bill, but she would be hanged because she used a revolver.')[84]

The occasion was one for scoring points rather than testing the strength of the bill itself. Observers noted one ominous development, however. Of the three Conservatives taking part in the debate who had supported abolition throughout the previous session, two (Anthony Kershaw and Sir Alexander Spearman) rose to welcome the bill as considerably more than half a loaf and indicated that they would support it through all its stages. If their conversion proved to be a straw in the wind—if the other Tory abolitionists were divided in the same ratio—all hope for blocking the Government machine was lost.

The Committee stage of the Homicide Bill occupied seven days in the House of Commons, spread over two-and-a-half months' time.[85] Dozens of amendments stood on the Order Paper in the names of abolitionists and retentionists, mostly lawyers (who monopolized this stage of proceedings, interrupted only infrequently by others who meekly put forward their lay opinions). Sydney Silverman and his colleagues laid down a set of amendments that would have cut the heart out of the clause establishing categories of murders (nullifying the special provisions for, e.g., murders committed in the course of theft, murders by shooting, murders of police and prison officers on duty, etc.),[86] while a group of Conservatives headed by Sir Lionel Heald attempted to add murder by poisoning to the list of capital offences. The Government successfully resisted all attempts to change even a jot or tittle of the bill. Twenty-three divisions took place, and in each of them the Government mustered a majority of from forty to sixty. Conspicuous among the Government's supporters on these occasions were a large number of the

former Tory abolitionists; only a tiny handful of this group spoke in favour of the amendments, and even they abstained on the divisions. By the time the Committee of the Whole House was set to report its decisions, the defeat of the abolitionists had turned into a rout.

On February 1st, a Private Members' day in the House of Commons, a small band of Conservative Members made what to the innocent observer seemed to be a series of harmless speeches about an innocuous hire purchases bill.[87] They were actually administering the *coup de grâce* to the Silverman abolition bill. By arranging for a full roster of Conservative speakers on the first of the two Private Member's Bills scheduled to debate that Friday, the retentionists managed to use up the entire five hours allotted for both bills, thus preventing Miss Bacon from getting a Second Reading for her measure. Despite abolitionist entreaties against the filibuster, the Speaker refused to halt a customary procedure of the House, and the faint hope that somehow Members would have a chance to vote once again on a straight abolition bill expired, victim of a series of successful Government strategems.

Five days later, the House of Commons gave the Homicide Bill its Third Reading by a vote of 217 to 131.[88] The new Home Secretary, R. A. Butler (who had replaced Major Lloyd-George when Macmillan succeeded Eden) hailed the bill as a victory for the forces which represented majority opinion in the country and a first step toward what he hoped would be a humanizing of British legal and penal practices. In an effort to obtain some guarantee that no hangings would take place in the future, Silverman asked the Government to confirm that in return for their support of the Homicide Bill, the Tory abolitionists had been assured by their party's leaders that the informal moratorium on executions which had been in effect for over a year would be continued indefinitely. That such a pledge had ever been made was denied vehemently by Government spokesmen, who made it clear that in the future as in the past, the Home Secretary would examine each murder sentence on the merits of the individual case. The final stage of the bill in the Commons was the occasion for threats and promises that the capital punishment controversy, for Labour Members at least, was far from ended.

The immediate chapter of the controversy, however, was well past its *denouement*. The members of House of Lords (now under whips) were not disposed to react as they had on the three previous occasions when they were handed Commons bills dealing with capital punishment. This time they accepted with alacrity the Government's handiwork and pronounced it a fitting monument to majority opinion as they had gauged it. If any of the noble Lords (such as the Lord Chief Justice) who had previously denounced

attempts to establish degrees of murder as unworkable had qualms about accepting the bill, they did not express them openly. There was criticism from abolitionist peers, of course. Viscount Templewood, for example, described the hybrid bill as 'nothing more than an expedient to extricate the Government out of a difficult position' —a phrase that echoed the Marquis of Salisbury's remarks about the Labour Government's compromise bill that came before the Lords in 1948. The futility of this and similar attacks on the bill was evidenced by the fact that at no stage of the proceedings was an attempt made to divide the House.[89]

On March 21st it was announced that the first major piece of legislation dealing with capital punishment in ninety years—the Homicide Act, 1957—had received the Royal Assent.

THE CRITICAL ROLE OF THE TORY ABOLITIONISTS

The substantive merits and/or deficiencies of the new law have been the subject of much discussion, during and after the events covered in this chronicle.[90] They lie beyond the scope of the present study, which aims to portray how and why the Homicide Act came into being at the time and in the form it did. Viewed broadly, the Act must be understood as the product of the historical and political forces that have been depicted in this and preceding chapters. But viewed strategically, it is clear that the advent of this legislation owed most to the small group of persons we have called the Tory abolitionists. They held the key to the resolution of this phase of the controversy. It was their initial action that brought on the crisis which forced the Eden Government to bring in its own bill; and it was their decision to support the Government measure that dashed the hopes of the Silverman abolitionists and allowed the Government to wind up the latest chapter of this historic dispute.

The most important political question raised by the foregoing events was: why did the Tory abolitionists agree in November to a course of action which they had opposed staunchly in February and throughout the spring? Some of the answers to this question have already emerged, but they need to be summarized and added to if we are to comprehend the total context of this change in Parliamentary behaviour. There are basically five factors that explain the withering away of Tory support for the abolitionist position (although, of course, not all of them are applicable to the decision of each of the 48 M.P.s in the group).

1. Obvious as it may seem, it is impossible to disregard the fact that many of the milder abolitionists were satisfied with the Government's compromise and sincerely believed that it constituted a victory for the abolitionist viewpoint. Instead of feeling regret over the turn of events, they exulted in the knowledge that their original

actions had brought the Government to assume a more liberal position than had been possible theretofore. They had in a sense initiated a new law of murder.

2. Between early and late 1957, this small band of Conservatives had been under strong pressure from individuals and groups whom they could ill afford to resist very long—their party leaders, their colleagues in Parliament, the national party organization, and their constituency associations. This pincers movement has already been described in detail.

3. Because the Homicide Bill was put forward as a Government measure, it put the dissident Conservative Members in quite a different position from the one they enjoyed when free votes were the order of the day. For them to vote against the advice of the whips, or even to abstain on crucial divisions, would have been to oppose the official policy of the party's leaders, to risk bringing down the Government, and to court disciplinary action of the kind that might put an end to their Parliamentary careers.

4. The pressure to maintain party unity, always considerable in the British Parliamentary system, was even greater in the autumn of 1956 and winter of 1957 because of the ruptures in Conservative ranks threatened by the several Suez crises that occurred at that time. It was felt generally that the party could not afford to multiply its difficulties by adding another internecine struggle over capital punishment to the strains already present in its ranks, and the small band of abolitionists were under strong pressure (often self-imposed) to close ranks in the name of party unity.

5. Finally, by late 1956 the subject had become more than a little wearying, if not downright boring, to most Members of Parliament, who were prepared to welcome a respectable settlement which would enable them to get on to other matters, It is no easy affair for Parliament (or for the public) to maintain an avid interest in a subject that has been before it steadily for several years, especially when it does not touch powerful economic or constituency interests and is not a basic element in a party's programme. Furthermore, it is significant that as Parliamentary sessions go, 1955-6 was a relatively quiet one, barren of large controversies or great bills, and hence disposed to welcome the excitement of a death penalty fight: while 1956-7, on the other hand, saw a change of government, major foreign policy crises, the Rent Act, and other compelling issues—all formidable competitors for the attention that previously had been lavished upon capital punishment. Smaller wonder that many M.P.s on both sides were quite prepared to put the earlier controversy behind them.[91]

The next and concluding chapter will analyze the total process by which this important piece of legislation came into being. It

should be clear by now that the checkered course of events of 1955-7 was but a stage in a long-term development, and that the passage of the Homicide Act was more the culmination of a search for political consensus than the finest flowering of enlightened criminology. But of such stuff is public policy usually made in a democracy, and neither the process nor the product can be written off as irrational.

NOTES

[1] Inasmuch as only ten Fridays are allotted for the stages of Private Members' Bills in any session, and hundreds of M.P.s are eager to obtain time for their bills, the chances of more than a half-dozen lucky bills passing into an Act by this route are very slight indeed. See P. A. Bromhead, *Private Members' Bills in the British Parliament* (London, 1956).

[2] In an action bitterly resented by fellow abolitionists, McGovern was in Finland preaching Moral Re-armament at that moment and had failed to notify his colleagues of his absence.

[3] 545 *H. C. Debs. 219-220* (November 10, 1955).

[4] Eric Taylor, *The House of Commons at Work* (Harmsworth, Middlesex, 1958), p. 154.

[5] 546 *H. C. Debs.* 207-210 (November 15, 1955).

[6] 546 *H. C. Debs.* 785-786 (November 17, 1955).

[7] This section follows the analysis of Christopher Hollis, 'The Tactics of Abolition,' *Spectator* 195 (November 25, 1955), 706-707.

[8] Informal soundings of members' views on capital punishment were taken at a meeting on November 29th of the Conservative Home Affairs Committee.

[9] (London, 1956).

[10] 'Vigil' wrote in *The Observer* for February 12, 1956: 'If the changes in capital law come into force, a Ruth Eilis would still be hanged, a Bentley might or might not get off with diminished responsibility, and . . . Timothy Evans would still be hanged because no reform of the law can eliminate the risk of judicial murder.' For other criticisms of the Heald Report see *The Spectator* 196 (January 27, 1956), p. 104, and the letter of Professor A. L. Goodhart to *The Times,* February 13, 1956.

[11] A Labour peer, Lord Chorley, had already arranged a debate on the subject for February 15th, but at the suggestion of the Howard League he withdrew his motion in return for a Government promise that they would provide the House of Commons with an opportunity for a debate before the end of February. Lord Chorley to H. J. Klare, February 5, 1956. Howard League files.

[12] *The Times,* February 10, 1956.

[13] Seventeen Labour, three Conservative, and one Liberal. The latter was Mr. Clement Davies, leader of the Liberals in the House, who only a year before had voted against the Silverman motion to suspend capital punishment for five years.

[14] Interview with Mrs. Peggy Duff, organizing secretary of the National Campaign, March 18, 1958.

[15] Almost one thousand of the signers were university and secondary school teachers. *The Times,* February 15, 1956.

[16] See the letter of Sir Thomas Moore, M.P., to *The Times,* February 18, 1956.

[17] By the middle of 1956, the National Campaign had collected over £4,000 for its activities. One of its more interesting fund-raising schemes was an auction of art objects contributed by its supporters, including the sculptor Sir Jacob Epstein and the painter Sir Matthew Smith, and well attended by London society. Viscount Astor told the writer that he had got an Epstein piece 'almost for the cost of the bronze'. Interview, May 23, 1958.

[18] (London: Chatto and Windus, 1956). In an editorial, the *Daily Telegraph* said that this book 'probably contributed more to the vote against hanging than any other single factor.' February 20, 1956.

[19] *A Life for a Life?*, p. 8.

[20] *The Times, February* 10th, 13th, 14th, 15th and 16th.

[21] The chairman of Christian Action, Canon L. J. Collins of St. Paul's Cathedral, was also a member of the National Campaign's executive committee.

[22] The B.B.C., for example, presented 16 programmes on the subject in 1955 and 17 in 1956. The topic was given less attention by the commercial television networks.

[23] The front page headline in the *Daily Sketch* for February 16th read:

HANGING
MUST STAY
PEOPLE'S VERDICT

The balloting results gave 65 per cent for keeping the death penalty as it was, 19 per cent for abolishing it altogether, and 16 per cent for hanging only 'the worst killers'. The scientific shortcomings of this polling technique need hardly be dwelt on.

[24] To cite just one example, on the same day (February 13) two well-known Englishmen—an 80-year-old retired judge and Dr. Leslie Weatherhead, President of the Methodist Conference—made public statements on opposite sides of the controversy. In the *Daily Mail* the following day the ex-judge's 'hang them all' remarks were given a six-column headline and six inches of column space, while buried at the bottom of the same page was a half column-inch report of Weatherhead's statement. Other examples abound, by no means all of them in retentionist newspapers such as the *Mail*. For a criticism of *The Times*' policy, see *The Spectator* 198 (January 11, 1957), p. 40.

[25] The best report of this meeting is in the *Daily Telegraph,* February 16, 1956.

[26] The debate is found in 548 *H. C. Debs.* 2544-2664 (February 16, 1956).

[27] A division was to be taken first on the Ede amendment to substitute the suspension of capital punishment for the terms of the Lloyd-George motion.

[28] 'The "Honourable Paradox": Postscript to the Hanging Debate,' *The Observer,* February 19, 1956.

[29] *The Times*' Parliamentary Correspondent, February 17, 1956.

[30] Their median age was 42·5, compared with 49·0 for all Conservative M.P.s. D. E. Butler, *The British General Election of* 1955 (London, 1955), p. 40.

[31] See Leon D. Epstein, 'British M.P.s and Their Local Parties: The Suez Cases,' *American Political Science Review* 54 (June 1960), pp. 374-390.

[32] Interview with Chief Whip Edward Heath, June 6, 1958.

[33] *Daily Telegraph,* February 20, 1956. The same thing was reported in *The Observer* the day before.

[34] 549 *H. C. Debs.* 578 (February 23, 1956).

[35] *Ibid.,* 578-585.

[36] For similar reaction see *The Observer,* February 26, 1956; *The Economist* 178 (March 3, 1956), p. 543; and *The Spectator* 196 (March 2, 1956), pp. 267-268. Typical of the abolitionist Press reaction was the *Daily Herald's* view that the Government had 'ratted on their promise', 'not played straight', and 'wriggled out of their obligation'. February 24, 1956.

[37] *The Economist, loc. cit.*

[38] 'Second Thoughts on Hanging,' *The Observer,* March 4, 1956.

[39] 550 *H. C. Debs.* 36-146 (March 12, 1956).

[40] The following section is based on information obtained during the spring of 1958 from interviews with the following M.P.s: John Eden, Edward Heath, Peter Kirk, Sir Hugh Lucas-Tooth, and Kenneth Robinson.

[41] Lucas-Tooth was the only Member to vote for the Government's position on February 16 and later for the Second Reading of the Silverman Bill on March 12th.

[42] For a perceptive analysis of the amendments see C. H. Rolph, 'Abolition and After,' *New Statesman and Nation* 51 (March 24, 1956), pp. 267-268.

[43] 551 *H. C. Debs.* 1789-1935 (April 25, 1956); 552 *H. C. Debs.* 2019-2169 (May 16, 1956); 553 *H. C. Debs.* 132-197 (May 29, 1956); and — for the Report stage and Third Reading — 555 *H. C. Debs.* 718-844 (June 28, 1956).

[44] It approved an amendment by Silverman himself that excepted Northern Ireland from the operation of the Bill, the reason being that changes of this kind had to be voted by the Ulster Parliament rather than at Westminster.

[45] The reason, according to one M.P., was that a half-dozen Conservative abolitionists, who had had a division bell rigged up at a social gathering they were attending, failed to hear the bell ring as the party advanced into the night.

[46] See *The Times* for February 23rd, March 5th, and June 15, 1956.

[47] Reported in *The Times,* June 13, 1956.

[48] *Report of the* 33*rd National Conference of Labour Women,* April 10-12, 1956, pp. 54-55.

[49] *Daily Express,* February 17, 1956; *Daily Sketch,* February 23, 1956. An editorial in the *Daily Telegraph* concluded that the abolitionist victory was 'not a triumph of reason over prejudice but of organized attack over badly organized defence.' February 17, 1956.

[50] 'No one thought of pointing out that about 130 murders are committed here each year so that on an average there is a murder every three days.' 'The Decisive Step,' *Spectator* 196 (February 24, 1956), p. 236.

[51] See, e.g., the *Daily Express* for March 9, 1956.

[52] *Annual Report of the Howard League for* 1955-56, p.2.

[53] 196 *H. L. Debs.* 219-222 (March 8, 1956); *ibid.,* 302-308 (March 13, 1956). See also the reports in *The Observer,* March 4, 11, 1956 and the *New Statesman and Nation* 51 (March 24, 1956), p. 268.

[54] 198 *H. L. Debs.* 563-842 (July 9-10, 1956). For a philosophical analysis of the theories of punishment raised in the debate, see W. B. Gallie, 'The Lords' Debate on Hanging, July 1956: Interpretation and Comment,' *Philosophy* 32 (1957), pp. 132-147.

[55] 'He has for years been looked upon as the revered father of Conservative peers—a man whose sagacity and political insight it would be almost blasphemous to question. There is at least one place where they still believe in the cult of personality.' *The Observer,* July 8, 1956. Lord Salisbury later resigned from the Government in protest over its colonial policy.

[56] Nigel Nicolson, *People and Parliament* (London, 1958), pp. 98-99. Criticism of this theory of representation is found in *ibid.*, pp. 99-102, and *New Statesman and Nation* 52 (July 14, 1956), p. 29.

[57] Cf. P. A. Bromhead: 'Some peers may have good ground for thinking themselves peculiarly well able to judge the public interest, but their position in British society is not such as to entitle them to set themselves up against a majority of the House of Commons as interpreters of public opinion.' *The House of Lords and Contemporary Politics* 1911-1957 (London, 1958), p. 220. See also Silverman's letter to *The Times,* July 17, 1956.

[58] *Ibid.,* p. 219.

[59] The Archbishop of Canterbury indicated in his speech that he would vote for the Second Reading in order to permit the Lords to amend the Bill, not because he was a total abolitionist.

[60] 'The Lords and the Constitution,' *The Economist* 180 (July 14, 1956), p. 110.

[61] Under Parliamentary questioning the Prime Minister promised nothing more than to make a statement before the end of the session. 556 *H. C. Debs.* 1037-1038 (July 17, 1956).

[62] Actually no executions took place until June of 1957, when the first person was hanged under the provisions of the Homicide Act.

[63] Letter of Sydney Silverman to *The Times,* July 17, 1956.

[64] It was not a mass petition, but one containing the names of leaders from various walks of life. Included were the names of 152 persons connected with the bar, the police, and the prison service; 116 writers; 351 churchmen; 237 university professors and officials; 403 secondary school officials; 420 local government officers; 93 persons in music, art and architecture; 48 stage and film personalities; and, representing science, 86 Fellows of the Royal Society. *The Times,* October 22, 1956.

[65] See, e.g., the guidelines set down for the Government in a *Times* editorial, 'A Modified Death Penalty Bill,' July 21, 1956.

[66] There were no reports of trouble in the constituencies of Labour M.P.s who had voted against the Silverman Bill.

[67] Nicolson's notoriety was due to three things: he opposed the party leadership on both capital punishment and Suez; he engaged in a running fight with his local association and was replaced by a 'shadow' perspective candidate; and he later recorded his experience and views of M.P.-constituency relations in book form (*People and Parliament:* London, 1958).

[68] 548 *H. C. Debs.* 2608 (February 16, 1956).

[69] From a letter of Nicolson to a constituent, March 11, 1956. Courtesy of Mr. Nicolson. See also *People and Parliament,* Chapter 7.

[70] Nicolson's relations with his local party, weakened by his behaviour on the death penalty question, were brought to the point of open conflict after he opposed the Eden Government's Suez policy. He was given a vote of no-confidence by the Bournemouth Conservative Association, another man was made prospective candidate for his seat, and he left Parliament after the dissolution of 1959. For a fuller report see *People and Parliament,* Chapters 5 and 6, and L. D. Epstein, *op. cit.,* p. 377.

[71] Of the 48 Conservatives who voted for the abolitionist motion of February 16th, 13 had majorities of between 5,000 and 10,000, 7 majorities of between 10,000 and 15,000, and 9 majorities of over 15,000 votes.

[72] *Programme of Proceedings,* The National Union of Conservative and Unionist Associations, Seventy-Sixth Annual Conference (Llandudno, 1956), pp. 81-85.

[73] *The Times,* October 13, 1956.

[74] Reported in *The Times,* October 10, 1956.

[75] 558 *H. C. Debs.* 487-490 (October 23, 1956). See also the announcement in the House of Lords, 199 *H. L. Debs.* 938-940 (October 23, 1956).

[76] Sydney Silverman, 'Murder and the Constitution,' *New Statesman and Nation* 52 (November 17, 1956), p. 618.

[77] *Manchester Guardian Weekly,* October 25, 1956.

[78] 560 *H. C. Debs.* 1186-1190 (November 15, 1956); 'Murder and the Constitution,' cited in note 76.

[79] *The Times,* November 16, 1956.

[80] A Conservative Member who had voted for abolition in the preceding session, Miss Joan Vickers, drew fourth place but decided not to use her time for the introduction of an abolition bill. *The Times,* November 20, 1956.

[81] 560 *H. C. Debs.* 1146-1261 (November 15, 1956).

[82] *Ibid.,* 1146-1147.

[83] *Id.,* 1150.

[84] *Id.,* 1183.

[85] 561 *H. C. Debs.* 244-355 (November 27, 1956); 404-538 (November 28, 1956); 1073-1198 (December 4, 1956); 563 *H. C. Debs.* 217-348 (January 23, 1957); 406-528 (January 24, 1957); 675-810 (January 28, 1957); 867-964 (January 29, 1957).

[86] Four Labour Members—Silverman, Reginald Paget, Leslie Hale, and Anthony Greenwood—accounted for the lion's share of the abolitionist speeches. For wit and humour, Hale's performances are matchless and deserve the attention of all connoisseurs of Parliamentary occasions.

[87] 563 *H. C. Debs.* 1323-1414 (February 6, 1957).

[88] 564 *H. C. Debs.* 454-568.

[89] 201 *H. L. Debs.* 1165-1242 (February 21, 1957); 202 *H. C. Debs.* 354-432 (March 7, 1957); 587 (March 14, 1957); 626-642 (March 19, 1957).

[90] For an excellent critique of the Act's provisions, see J. E. Hall Williams, 'The Homicide Bill,' *Howard Journal* 9 (1957), pp. 285-299.

[91] The sentiments of the Tory abolitionists' chief whip were typical: 'We have a Bill which is full of anomalies and of illogicalities and a Bill which quite clearly has not brought and could not bring this controversy to an end . . . Nevertheless, it is probably a good thing that after a year's intense debate and discussion there should be a breathing space of some kind to enable us to see exactly where we have reached.' Peter Kirk in 564 *H. C. Debs.* 484 (February 6, 1957).

CHAPTER 7

THE CAPITAL PUNISHMENT CONTROVERSY AND THE POLITICAL PROCESS

THE preceding chapters have been designed chiefly to tell a story, to relate the political history of the movement dedicated to the abolition of capital punishment in the dozen years following the end of the Second World War. In the main, where references were made to the larger context of British government and politics, they concerned the particular event or institution under examination at the moment and were not offered as generalizations about the nature of the system itself. Nevertheless, the purpose of this case study is to cast light upon the process by which public policy in Britain may emerge on an important non-economic question highly charged with emotional overtones; and because this kind of issue is by no means unique to the political life of Britain, it must be analyzed from the standpoint of the political scientist as well as that of the historian. This concluding chapter thus will consider a number of the questions raised by this rather unusual controversy which elucidate the nature of the British political system.

COMPROMISE AND CHANGE

Any balance sheet would have to take into account the variety of changes in the law of murder and the provisions for its punishment that emerged during the period 1945-57. While the Criminal Justice Act of 1948 cannot be attributed to abolitionist pressures (and perhaps should be catalogued as a defeat for the abolitionists), it is clear that without the activities of the reformers the Homicide Act of 1957 would never have come into being at the time or in the form that it did. The latter Act hardly satisfied the enemies of capital punishment, who saw it as at best a palliative brimming with anomalies, but even they privately took comfort in the knowledge that the changes it worked probably would reduce the number of yearly hangings to two or three from the previous average of a dozen. Anomalous as they may have been, the provisions of the Homicide Act represented a step in the direction of bringing the law into accord with customary practice (a familiar method of

institutional growth in Britain) and an attempt to give legal recognition to the consensus of opinion that had emerged as the result of the prolonged debate over the death penalty.

It should also be recalled that the establishment of a distinction between capital and non-capital murders was not the only change in the law that occurred at this time. Included in the Homicide Act were sections that eliminated long-standing iniquities and rigidities in the law of murder, such as the doctrine of 'constructive malice', and provisions that brought the law into accord with modern criminological recommendations, such as the importation of the Scottish doctrine of 'diminished responsibility'. It is very doubtful that either the Labour or Conservative Governments of this period would have introduced such legislation on their own initiative had not the agitation over capital punishment forced them to take a position on these related questions of the criminal law. The way in which the changes came about was typical of the workings of the political process. They were proposed originally as reforms that would appeal to moderates on the capital punishment issue (both in Parliament and in the public) in the hope that their acceptance would forestall mounting pressures for total abolition. Such a tactic did not succeed at first, but when the reforms reappeared in the Homicide Bill, they served well the needs of the Government of the day by providing solace to Tory progressives and placing the abolitionists in the difficult position of having to decide whether or not to fight a bill incorporating desirable reforms that had a good chance of passage. Basic changes that had been urged for decades without success by law societies, criminologists, psychiatrists, and penal reformers finally reached the statute book because in the middle of a parliamentary struggle over a related issue they made up the raw material from which compromise could be constructed. They had become politically useful.

In retrospect it is difficult to see how the abolitionists could have hoped for more than half- or two-thirds of a loaf. Throughout the period theirs was a decidedly uphill fight against a variety of opponents—majority public opinion, powerful interests intrenched in the Home Office, the House of Lords, traditional attachments to long-standing social institutions, the timidity of politicians faced with emotionally-charged controversy. Their only clear advantage, perhaps, lay in the editorial support of most of the 'prestige press'. What was surprising was not that the abolitionists' campaign finally broke when it encountered the assertion of Government will and authority; it was that a comparatively frail reform movement, possessing few of the resources or opportunities available to established groups in British society, was able to muster sufficient pressure to force substantial changes on a government not especi-

ally devoted to the reform of existing legal or moral codes. Such limited success as the abolitionists enjoyed was in the tradition of English legal reform which, as indicated in Chapter 1, usually entailed a series of attacks by an informed minority using opportunities created by shifts in public opinion on questions of crime and punishment. The line that led from Roy Calvert to the National Council for the Abolition of the Death Penalty to the Select Committee on Capital Punishment to Sydney Silverman to the Royal Commission on Capital Punishment to the National Campaign for the Abolition of Capital Punishment to the Homicide Act was wavy but unbroken. On almost all occasions the abolitionists eschewed compromise and insisted upon the absolute character of their claims. Yet these claims had to be put forward in the political process, and the result was the kind of moderate change that politicians find so congenial and minority publics (of whatever character) so frustrating.

THE SPECIAL CHARACTER OF LEGAL AND MORAL REFORM

Political opportunities and methods are often conditioned by the nature of the subject matter at issue. Attempts to transform basic economic relationships in society, for example, often require different kinds of group support, approaches to decision-makers in government, and appeals to the public from those aimed at, say, the preservation of historic houses or new legislation on homosexuality. Not only does the type of subject matter involved dictate different roles for the various institutions of government (in some cases, for instance, allowing the solution to take place at the administrative rather than the legislative level); it may also call into play larger or smaller publics and affect the style of political discussion that takes place in the nation.

Questions like capital punishment, embodying as they do moral as well as legal considerations, are likely to call forth strong emotions. As the preceding chapters have shown, both the retentionists and the abolitionists made ready use of emotional references and appeals. To raise the subject of the state's power to exact the supreme penalty undoubtedly is to probe deeply into the conscience of the community and touch fundamental attitudes, fears, and values; and to try to change a traditional policy in this realm (or to resist such change) requires tactics that penetrate the emotional underpinnings of the slogans that pass for rational public argument.

Emotional issues are likely to be 'popular' issues in the sense that the layman feels at home with them and competent to pronounce upon them. They evoke widespread public interest of a sort not present when technical or more mundane questions are raised in politics. As the polls indicated, few Britons were without opinions

at any stage of the controversy, irrespective of the amount or accuracy of the information they possessed. On the Second Reading and Report stages of bills before Parliament, for example, as many laymen expressed their views as did barristers or former Home Secretaries, and most of them were willing to match their knowledge of foreign statistics or their acquaintance with the criminal elements with those of their Learned Friends. The rather emotional, lay character of the issue had important consequences for the political process into which it was thrown. Professional expertise was less in demand and less influential than it had been on other occasions. The capital punishment public was large and aware of its potency. The Home Office, the Howard League, and the Royal Commission could muster relevant data, and their views and activities were important in the total process; but technical competence did not play the role it often does in politics of reducing the size of the interested public and leaving the big decisions to the active few.[1] So long as the issue remained moral and emotional, as well as legal and statistical, there could be few acknowledged experts in the usual sense. And if experts were allowed a smaller place than is generally the case, public opinion occupied a larger one. Everything pointed to the fact that the capital punishment controversy had a particularly large following in Britain, and the politicians who were in a position to do something about it showed themselves to be extremely sensitive to both the state and trend of public opinion surrounding the dispute. This was especially true of the various Governments during this period. In 1948 the Attlee Government first opposed the death penalty, partly because it was aware of general public hostility to sweeping changes in the traditional treatment of murderers; whereas in 1955-7 the Eden and Macmillan governments were keenly aware of growing public uneasiness and pressures upon them to do something to bring the law of murder into line with social realities. In spite of the lip-service given by both sides to the idea that the function of political leadership is to move ahead of mass opinion, even onto unpopular terrain, it was seldom possible for government and party leaders to do so on an issue that engaged such a large and intense public.

Throughout the dispute it was asserted that the fate of capital punishment was not a party political question. In some respects this was quite true. There were no references to hanging in the manifestoes which the major parties presented to the electorate during these dozen years. Most of the divisions taken in Parliament were free votes (with Governments applying whips only when forced to by their miscalculations on earlier occasions). Nevertheless, the behaviour of the politicians who were drawn into the controversy followed reasonably clear party lines. Labour M.P.s provided the

big battalions upon which the abolitionists attempted to build their majorities, and even taking into account an all-important cluster of Tory dissenters, it can be shown that the retentionist centre of gravity remained always on the Conservative benches. It is fair to speculate, then, over why the parties *qua* parties assumed such ambiguous positions. Perhaps the most plausible explanation is that moral questions such as capital punishment have an uncertain relationship to the central body of doctrines held by each of the parties and, in the eyes of the parties' chief strategists, are politically unrewarding. Emotional issues that plumb deep-seated moral codes—for example, birth control, prostitution, homosexuality and hanging—are 'hot potatoes' that party leaders find uncomfortable to handle, not least because the leaders fear their unpredictable and often diversionary character. In Britain as elsewhere it seems to be true that politicians are most attracted to and at home in bread-and-butter economic questions, cautious and vague about foreign policy and colonial issues, and highly fearful of conflicts stemming from efforts to change traditional social and moral attitudes. Concern for their party's image with the electorate, along with solicitude for the consciences of individual M.P.s, weighed heavily with the political leaders of this period, and whenever possible they tried to avoid the capital punishment issue and when impossible to leave the advocacy of the strong positions to the backbenchers. The leadership of neither faction included the 'big names' in contemporary British politics.

This brings us to another special characteristic of this type of controversy: the greater likelihood of its being played out in the legislative branch of government than is true of other types of public decision-making. Of course the struggle over capital punishment took place in almost all the standard arenas of the political process—Cabinet, Parliament, ministries, courts, parties, pressure groups, etc.—and cannot be comprehended without grasping how decisions emerge in each of them. Nevertheless the important decisions on this subject differed from many others in that they could not very well be taken at the administrative level or through informal agreement between interest group spokesmen and their counterparts in the officialdom. This may seem strange, for we have been told many times that in modern Britain the power of Parliament has declined and the centre of effective power has shifted substantially to the administrative areas.[2] No doubt this generalization holds for those economic and foreign-policy decisions that account for so much of the total activity of governments today. Certainly, too, in the fields of social control there are important policies that receive only passing or belated scrutiny by Parliament.[3] Despite this trend in policy-making in the modern positive state, there remain areas where

change can be accomplished only through Parliamentary action. Few democratic governments are willing and able to settle emotion-charged controversies solely by executive fiat or the exercise of administrative powers.

This was clearly so in the case of the death penalty. Although occasionally it was urged that the best way to eliminate the penalty was to persuade Home Secretaries to grant increasingly more reprieves of death sentences until hanging fell into total disuse (as had occurred in Belgium), such proposals satisfied few persons who understood the nature of the issue. In the first place, to abolish capital punishment in Britain required basic changes in the law of murder that only Parliament could make. When one of the historic pillars of English law was involved and the community divided over its future, it was inconceivable that the vital decisions would be left to ministers or administrative officials alone. Furthermore, it is on questions such as this, in which informed lay opinion is considered as weighty as the views of experts, that Members of Parliament are most likely to refuse to delegate their power of decision to another level of government. Newspapers and journals often depicted the debates on capital punishment as examples of the British Parliament at its finest, thus giving momentary comfort to those who feared further encroachments on that body's traditional powers. These factors, along with the well-known desire of the electorate that their chosen representations should stand up and be counted on strong emotional issues, explain why so many battles had to take place within the halls of Westminster and so much of the abolitionists' attention had to be directed toward Parliamentary strategy. Probably to a much greater extent than in the case of mundane policy questions or in the activities of sectional interest groups, the capital punishment struggle had to be fought in full view of the public. From the standpoint of the abolitionists, this need to concentrate on Parliament had advantages and disadvantages, as the preceding chronicle shows.

A final characteristic of this type of reform activity deserves reiteration. It is that the prospect for change can be affected markedly by happenings outside the political process and by occurrences more or less uncontrollable by either the reformers or their opponents. This was brought out in the discussion of the several murder cases that played a large role in the fate of capital punishment. It is doubtful that abolitionist feeling in the nation would have been strong enough to force reconsideration of the issue by Parliament in the mid-fifties had not the Bentley, Evans-Christie and Ellis murders taken place and achieved their particular notoriety. The reformers were not influential enough to make their own opportunities; to a large extent they had to rely upon chance

occurrences before a suitably large public could be created on the issue. Their organizations lacked the power of many interest groups to control events in the subject area of their concern (in this case, crime and punishment). They had to depend upon the changing tides of attitudes whose sources were not only deeply imbedded values but also transitory emotional responses triggered by accidental events. This factor could either help or hinder a position such as abolition or retention. The cause of abolition, for example, might be advanced by a series of murder cases in which it is suspected that an innocent person has been hanged; or it might be set back by one or more particularly heinous murders that arouse fears and disgust in the community. In any case, the influential event is, at least at its inception, outside the political process and not subject to planning or control by those whose political purposes are directly affected by it.

The recent controversy over capital punishment is but one of many issues on which government action has been urged by socially and morally sensitive people in a democracy. Campaigns have been under way for decades to change traditional public policy in Britain on subjects such as marriage and divorce, prostitution and homosexuality, sabbatarian legislation and blood sports. All these subjects evoke strong emotional feelings from proponents and opponents alike. The present study of a single controversy lends credence to the hypothesis that quite different problems are raised and different strategies required by efforts to work changes in this area than in the case of controversies over economic issues or issues on which the political parties traditionally have taken firm positions.

THE CONTROVERSY AND PARLIAMENTARY INSTITUTIONS

Some questions are difficult by their very nature. Others grow difficult because they become entangled in political machinery that is either ill-fitted to deal with them or loaded against them from the start. Such was the case with the capital punishment controversy. It strained the parliamentary process greatly on many occasions and brought into play constitutional and procedural difficulties that defied easy solution. In a real sense the outcome of the recent phase of this historic struggle depended as much on decisions as to the use of parliamentary machinery as on the merits of the case itself. Of the many ticklish questions raised in the several attempts to bring the dispute into the arena of Parliament, two stand out as basic: What should be the responsibility of a Government on this issue, and what is the proper relationship between the two Houses of Parliament on such a matter?

Perhaps the single most important characteristic of British government today is the concentration of immense power in the hands of

political executive, those leaders of the majority party who are known collectively as the Government. The primacy of the Government in the realms of administration and legislation is virtually unchallenged in modern Britain. It is acknowledged to have the power to set public policy and the responsibility for setting it. The question that arises from the foregoing case-study is, however, what do we mean by public policy in such a system? Historical experience indicates that over the years Parliament has refused to equate public policy with the whole of its business, and traditionally some issues which have come before it have been treated as matters of purely local concern or matters for individual private conscience rather than for the Government to decide. The very existence of such instruments as private bills, Private Members' bills, free votes and exemptions from the disciplinary clauses of one party's Standing Orders testify to a double standard for dealing with political controversies. Even when a Government decides that a certain issue lies outside the policy area for which it will assume responsibility, it may not be able to wash its hands completely of the consequences of action taken in the nether realm, however.

The responsibilities of a Government in the field of criminal law and penal policy are, in the main, clear. It is charged with the duty of maintaining public order and security. It is the enforcer of the law of the nation and in most cases the initiator of basic changes in the character of that law. It includes a ministry, the Home Office (always represented in the Cabinet), which has vast powers over and responsibility for the conduct of law enforcement and penal administration. Furthermore, it is hard to deny that any action taken by the state in the area of crime and punishment, whether or not it has been sanctioned formally by the Government in power, adds to the moral atmosphere in which life goes on in the nation. At first blush, then, there seem to be powerful reasons why all decisions affecting crime and its treatment belong in the realm of public policy and subject to the usual process by which Governments make policy and stand accountable for it.

Thus it is fair to ask why the state's policy toward capital punishment, which surely is one of the cornerstones of its penal system, should be exempted from this requirement. There are basically three explanations for the tendency in Britain to view the death penalty question as a special case. One explanation is that the leaders of Parliament occasionally free from the ordinary claims of cohesion and discipline certain issues that fall into the category of 'matters of private conscience', particularly if such issues appear peripheral rather than basic to the main business of government. To many M.P.s capital punishment was essentially a moral and not a political question and deserved to be treated exceptionally. A second

explanation is that Parliamentary tradition has been strongly on the side of treating the issue as a non-Governmental question. The early abolitionists were almost all backbenchers, and the opportunities they seized and the victories they achieved were usually over the opposition of Governments. It is easy to see that as a minority element the abolitionists would champion the principle that their issue was non-partisan and non-Governmental in character; indeed, long before 1945 they had established the tradition that when questions involving capital punishment arose they were to be given special facilities, such as the free vote, which did not affect the Parliamentary position of the sitting Government. Finally, as already indicated, because party leaders have most often viewed this subject as too hot to handle and too unpredictable in its political effects, they have tended to avoid committing the party on it in its programmes and manifestoes, so that once in power the party is free of any obligation to press the issue because of earlier promises to the electorate.

It is paradoxical that although in recent years Governments have tried to refrain from assuming responsibility for the issue by permitting it to be raised by backbenchers and by refusing to impose whips when it first has come before the House of Commons, they have not been able to contract out of the consequences of their ambivalent views and invariably have been embarrassed into introducing official legislation and supporting it with whips. This happened in 1948 when as the result of the Attlee Government's permitting of a free vote on an abolitionist amendment to the Criminal Justice Bill a chain of events was set in motion that forced the Government to produce a hastily drafted and anomalous compromise bill which neither it, the abolitionists nor the House of Lords really wanted. Much the same thing occurred in 1956 when a Conservative Government faced the same battery of pressures and opted for the same irresponsible solution. By refusing to make their views on capital punishment matters of official Government policy, both the Attlee and Eden regimes opened a Pandora's box of troubles that finally was shut only when they rediscovered their responsibilities in this realm. Before this happened, in each case, the British nation was treated to scenes of political and parliamentary confusion scarcely equalled in recent times. It is difficult not to conclude that the source of the trouble was the inability of the Governments in question to realize that responsibility for the state's policy on the ultimate penalty lay with them and under the British system of government could not be left solely to Parliament as a congeries of private consciences.[4] However high-minded were the motives for taking the latter course, the consequences for public policy were, to say the least, unfortunate.

This very reluctance of Governments to assume a strong role in the dispute provided the abolitionists with opportunities and limitations on what they were able to do. Unable ever to persuade the executive to introduce legislation of its own abolishing the death penalty, the organized abolitionists nevertheless were able to invoke traditional procedures and use the weapons of the backbencher to keep the issue before Parliament. Their difficulties arose from the very weakness of these weapons—the private Members' bill, the private Member's amendments and motions, the Ten Minute Rule —as compared with the powers that Governments could rely upon on those occasions when they decided that the matter was properly within their responsibilities. The abolitionists were able to achieve what they did partly because Governments were willing to allow some of their followers (in particular Labour ministers in 1948 and Conservative backbenchers in 1956) to abstain in the divisions or vote with the Opposition, and partly because the Governments felt themselves bound—up to a point—to accede to the results of free votes in the Commons. When the Governments saw that the product of these displays of tolerance and good will (or was it irresponsibility?) was likely to be the imposition of policies that they strongly disapproved, they backtracked, brought forth compromise bills and imposed whips. In one case the solution ran afoul of the House of Lords; in the other it succeeded with the blessing of the upper chamber.

The point is simply that in order to achieve their goal the abolitionists needed the positive backing of the leaders of the political party in power. This they never got, and in its place they had to depend upon a series of 'outsider' procedures and bipartisan coalitions—frail reeds indeed to support their case. Even with an impressive string of victories to their credit in the 1955-6 session, for example, the abolitionists could achieve at best only compromise on a higher level than in the past, once the sleeping giant of executive power was roused to face its dilemma. Time and again abolitionist leaders such as Silverman emphasized the essentially non-partisan character of the controversy in a desperate attempt to patch together a coalition strong enough to overcome the executive's support of the death penalty or to persuade it to bring in its own bill. But whenever a Government realized that what was at stake was really an element of public policy for which the system required that it take responsibility, it was able to put a quick end to the bipartisan interlude, and the normal pattern of party government returned. Under these circumstances it was almost inevitable that the abolitionists could achieve little more than (to them) an unsatisfactory palliative.

Another consequence of the refusal of Governments to include

the capital punishment question within their view of public policy was the enhancement of the political power of the House of Lords over the criminal law of murder. It was the Lords who put an end to abolitionist hopes for the total suspension of the death penalty in 1948 and 1956, forced the withdrawal of one compromise measure and consented to another only when it came to be sponsored by a Conservative regime. So long as the Government of the day opposed these bills in the Commons and made their supporters resort to back-benchers' procedures, abolitionist bills even when successful lacked the necessary political support for passage through the Lords. Without the backing of an executive resolved to treat the issue as an essential part of its legislative programme, such measures were virtually doomed in a chamber where Conservatism and retentionist feeling predominated. Only when a Conservative Government belatedly embraced the concept of categories of murder did the majority in the Lords put aside their predilections and swallow the idea of change.

The influence of the House of Lords in this controversy was great not only because governments regularly contracted out of their usual legislative role, but also because the Lords succeded in convincing the public that capital punishment was just the kind of subject on which the second chamber should properly have a large voice. In contrast to most of the economic and social legislation that came to them from the Commons in the 1940's and 1950's, which furthered the declared intentions of the party in power, the death penalty issue appeared to be the kind of measure on which the Lords could exercise an independent judgment. The timing was important, too, for the period under examination was one in which the upper House was under steady attack as dangerously unrepresentative, anachronistic and under the permanent control of a single political party. Inevitably the Lords' action on the death penalty became involved in the dispute over the reform of that body's composition and powers. It did the Lords no harm to be able to claim that their actions were more in keeping with the prevailing mood of the British people than were those of their elected representatives. So long as governments were faced with decisions that were primarily moral and emotional in nature and not the exclusive province of experts or party caucuses, the Lords could argue that there was a place in the political system for their peculiar talents.

The abolitionists were at a special disadvantage in trying to overcome the implacable opposition of the Lords, for they never were able to portray the situation as a classic 'peers versus people' struggle and reap the benefits of public sentiment aroused to defend representative democracy. Most of the votes of the Lords in fact supported the original views and real preferences of the Government

of the day, and at best the abolitionists could do little more than raise the faded banner of House of Commons supremacy. The capital punishment controversy produced several interesting formulations of the proper relationships between the two Houses of Parliament (notably those of Silverman and the Marquis of Salisbury), designed to do service to either the abolitionist or the retentionist position; but it is worth remembering that such disputation made sense only in constitutional crises brought on by the failure of the governing party to assume official responsibility from the start.

PARLIAMENTARY LEADERSHIP AND STRATEGY

The preceding section indicated some of the institutional limits within which the controversy was fought. Important as they are, such institutions by themselves do not determine the outcome of political events, for often it is possible to put the same institutions to quite different uses. It is necessary to ask additional questions about the techniques and strategies which political leaders adopt within this general framework. Particularly in contests in which many standard procedures and 'usual channels' are by-passed, the leadership factor assumes great importance.

The present study has shown that the locus of effective leadership on the capital punishment issue shifted several times, occasionally being exercised by the prevailing Government but more often by back-benchers of the major political parties. The power of individual Members to initiate and guide the course of legislation in the British Parliament has never been great and has declined steadily over the past century; yet because of the reluctance of the normal motive force—the Government—to give a lead in many questions of penal policy, organized groups seeking change have had to rely upon back-benchers and their limited weapons of leadership to press their cases in Parliament. Most affected by this necessity, of course, were the abolitionists, who needed especially aggressive and skilful leaders in their fight to modify the *status quo*. The history of their recent efforts offers clear evidence that while backbenchers were able to initiate almost every Parliamentary action concerning the death penalty, whenever the executive chose to assert its authority in the usual manner (as in late 1956) it was able to regain leadership by virtue of its control over party and legislature and force the backbenchers to fight on ground not of their choosing. Almost always this occurred too late for the Government to undo completely what the individual Members had initiated, however, and the unintended bifurcation of leadership often brought consequences desired by neither Government nor back-benchers.

Both sides needed and got leaders, although undoubtedly the differences in position and strength of the sides called for different leadership qualities. As partisans of the existing policy, the retentionists drew strength from the general state of public opinion, from the conservatism of Home Secretaries and the Home Office, from the disinclination of governments to initiate action in this field, and from institutional advantages in the form of the procedures of the House of Commons and the very existence of the House of Lords. As a defensive group the retentionists usually were willing to let the other side make the moves and then react to them. All too often they were content either to let institutions substitute for strategy or to let the Home Secretary of the day substitute for a single-minded leader, with consequences familiar to the reader. The abolitionists, on the other hand, faced different problems. They wanted change; they had to operate from a minority base in the country and often within Parliament; they had to find a way to keep the cause alive in the face of numerous defeats; they had to create and maintain a coalition from both sides of the House of Commons; and they had to overcome Parliamentary institutions which, if not in theory, at least in practice turned out to be hostile. For the abolitionists more than the retentionists, skilled leadership was essential if they were even to get a foot in the door, not to mention convince a reluctant nation of the rightness of their cause.

The leadership of the abolitionist forces came from both inside and outside Parliament. Occasionally there was dissension between the two leadership groups, and at times their actions might have been better coordinated; yet in the main the two levels reinforced each other, and there was sufficient overlap in membership to prevent schisms over goals or tactics. Abolitionists could rely, for example, on the Howard League for research data and prestige within governmental circles, on the National Council and later the National Campaign for lobbying and propaganda efforts, and on a core of militant sympathizers in Parliament for tactical advice and the actual initiation of proposals. There were dedicated and stubborn leaders in each of these groups, and despite their varied personalities and somewhat diverse bodies of supporters, such leaders were able to submerge temperamental and tactical differences in the face of a common enemy.

This was especially true of the abolitionist group in the House of Commons. The small nucleus of active abolitionists was made up chiefly of Labour backbenchers (particularly prior to 1956), many of them far to the left politically. In order to build the kind of majority capable of weathering the storms they had to face, this group had to convince M.P.s on both sides of the House that the cause which they were pushing was not partisan in the usual sense

of the word and certainly not solely in the interest of the radical left. Both the retentionist and abolitionist leaders were dependent upon the middle group of less engaged and uncommitted M.P.s, with whom the balance of power often lay. For this reason, the abolitionist leaders had to be at once aggressive in seizing opportunities and moderate (and 'non-partisan') in using them.

These needs were well illustrated in the case of Sydney Silverman. When it became clear in the mid-40's that Silverman had taken charge of the abolition campaign in the House of Commons, he was viewed with suspicion both by the organized groups outside Parliament, who feared that he was politically too radical and personally unpopular to be effective in the campaign ahead, and by Conservative abolitionists, who feared that he would alienate their colleagues by his aggressive and sarcastic treatment of Tories in general. Others feared that as an almost professional backbencher—a 'loner'—Silverman would be temperamentally incapable of leading the kind of stable coalition required for the impending struggle. To his credit Silverman surprised them all. His persistence and aggressiveness were just what was needed to keep the capital punishment issue alive over the lengthy period required before action was taken. He kept up almost constant pressure. He showed that he understood the special need not to frighten off moderates and fence-sitters by assuming a more modest, cooperative and conciliatory approach than many had thought possible. Finally, he was able to put his encyclopaedic knowledge of parliamentary procedure to use in such a way as to maximize the few opportunities open to the Commons abolitionists and occasionally to out-manoeuvre their opponents. Those who began by scoffing at the thought of Silverman as a Parliamentary leader ended by admitting their grudging respect for his achievement on this issue, if nowhere else.

Both sides made mistakes and miscalculations, the retentionists probably more than the abolitionists. Perhaps the retentionists could afford to err more often, since in most cases they could fall back upon prepared positions, sulk in their embarrassment, and live to fight again. For the attacker with limited openings like the abolitionists, mistakes were much costlier, if only because with today's tight Parliamentary timetable a missed opportunity or a tactical blunder may mean years before another chance occurs. The retentionists made three major blunders in this period, two of strategy and one of organization.

First, they accepted too easily the tradition that all House of Commons divisions on capital punishment must be free votes, and they agreed too readily to the supposed corollary that Governments are bound by the result of such votes. The result almost every time was that retentionist-minded Governments were put into positions

that could lead only to defeat, compromise, embarrassment or hypocrisy. Second, the retentionists suffered several times from inaccurate political intelligence. Perhaps for want of proper antennae, or because they refused to believe their ears, government leaders were sadly misinformed of the strength of abolitionist feeling in the House of Commons and agreed to free votes because they really believed that there was a sitting majority for the death penalty. Admittedly leaders must make decisions on the basis of incomplete information when the normal whipping machinery of the House is not available to them. Still, it is difficult not to conclude that more could have been done by the Governments in 1948 and 1956 to learn about the mood and intention of their own supporters—and of the Opposition—than actually was done. This casualness about basic political intelligence led to a host of troubles and eventually to inroads into the policies for which the retentionists stood. Finally, the retentionists failed to develop the kind of organization and leadership which, had it been effective, probably would have avoided the errors just cited. It may be true that to fight from a defensive position does not require the same amount of organization as that needed by attackers; and it may also be true that a potent alliance embracing majority public opinion, support or benevolent neutrality from the government of the day, Home Office predilections and the power of the Lords went a long way toward serving as a substitute for formal organization or continuous leadership. However, the course of the Parliamentary struggle showed that more was needed, especially as leaders in the executive wavered (until late 1956) and public opinion underwent changes. It probably would have been difficult to organize a Society for the Retention of Capital Punishment outside Parliament, but inside it there was sufficient stability of retentionist feeling to permit effective organization. As it was, passion ran higher on the abolitionist side and it was mobilized and focused by Parliamentary and outside leaders in a manner not equalled by the retentionists.

For all their advantages in leadership, however, the abolitionists had to develop their strategy in a legislative context that offered them little room for manoeuvre. They were outsiders, backbenchers who had to fit their programme into the interstices of the prevailing Government's timetable. As has been pointed out so often here, they lacked the instruments of control that might have enabled them to present to Parliament a separate abolition bill at the psychologically right moment. Without the support of a governing party they were at the mercy of those who set priorities and determined timetables. In 1948 they had to take the opportunity afforded by the introduction of the Criminal Justice Bill to put forward their amending clause, only to discover that their success could be

reversed by a Government fearful of losing the entire reform bill in the House of Lords. Labour's crowded legislative schedule and the imminence of a general election worked against the abolitionists' strategy at this stage. The relative quietness of the 1955-6 session permitted another full-scale examination of the death penalty issue, but the advent of the Suez and Hungarian crises in the second half of 1956 permitted the Eden Government to take in the slack and deprive the abolitionists of the parliamentary time and procedural amenities they had previously enjoyed. A generalization worth further testing is that moral reforms of this type have a greater chance of success during periods in which political temperatures are running low and the legislative agenda is not crowded with items of compelling interest to the executive. In any case, the abolitionists never had what their opponents almost always enjoyed: strategic control of the timetable. Parliamentary consideration of capital punishment was an action forced upon the executive, not part of its calculation of a total legislative programme. In order to see any of their proposals advanced to the Second Reading stage abolitionists had to depend upon either risky procedures or the sustained tolerance of the executive—no firm ground on which to build successful strategy.

In addition, retentionists were able to call into play a number of procedural gambits that worked against the possibility of total abolition. Knowing that the customs of the modern British Parliament militate against the successful introduction by backbenchers of major legislation not approved by the Government, the retentionists made sure that the abolitionists never got a single-purpose bill through all its stages. Either the suspension of the death penalty was admitted only as an amendment to a popular omnibus reform measure (as in the compromise clause in the Criminal Justice Bill) or Government support gave the inside track to a rival bill combining generally welcome reform proposals with provision for keeping the death penalty for certain crimes (as in the Homicide Bill). In either case the abolitionists were faced with the prospect of losing the support of moderates if they opposed the total package on principle. Furthermore, in their attempts to override the vetoes of the House of Lords, abolitionists were deprived of the use of the Parliament Act because in each case the bill presented to the House of Lords following its initial veto was a different measure than the one originally sent up and therefore outside the scope of the Act. The effect of these procedural delays was to weaken the abolitionists' chances of holding together their majority and of finding another parliamentary opportunity to bring in their own bill instead of the multiple-purpose compromise bills favoured by their opponents.

Summing up, it can be said that although dedicated and skilled

leadership enabled the abolitionist forces to maximize their power in Parliament, they could advance on only limited fronts due to the severe obstacles thrown up by the institutions and traditions of the British political process. The abolitionists may have had better leaders, but the retentionists and the moderate compromisers held most of the ultimate weapons.

THE ROLE OF PRESSURE GROUPS

One of the most striking developments in the study of British government in the past decade has been the 'discovery' of pressure groups. Contrary to the earlier assumption that strong political parties, Parliamentary supremacy and traditional British propriety had obviated the need for and weakened the power of pressure groups, much evidence has come to light showing that outside associations are both numerous and powerful elements in the British political process.[5] In their haste to revise previous judgments, some observers have gone so far as to attribute to pressure groups the dominant role in public policy-making in this system. An examination of the capital punishment controversy reveals the limitations of any such attempt to force the myriad materials of politics into a Procrustean bed.

Pressure groups played an important but necessarily limited role in the capital punishment controversy in the period under consideration. Most of the groups that figured in these events did not come into being during the period, nor did they withdraw from the political scene once the 1957 decision was reached; and it is safe to predict that so long as public attitudes toward the death penalty continue to be aroused periodically, organized groups on the several sides of the issue will remain active. Despite the fairly heavy concentration of organized activity on their part, abolitionists did not comprise the sole groups interested in the controversy. Official groups such as the Home Office, party associations such as the National Union of Conservative Women, and certain fundamentalist religious organizations, although never welded together into a formal retentionist pressure group, nevertheless acted in a manner quite similar to one. Throughout most of the period the group struggle was between a passionate and organized minority on the one side and a less organized, less dedicated, but more numerous coalition of official groups, heavily reinforced by majority opinion and control of Parliamentary institutions, on the other.

The several abolitionist organizations that figured in the foregoing account belong more in the category of 'attitude' than of 'sectional' groups. The chief difference between a sectional spokesman group and an attitude group, according to Allen Potter, lies in the fact that 'it is the political task of the former to try to reflect the

particular interests of its section, while it is the political task of the latter to try to persuade people, regardless of their sectional affiliations, to subscribe to its point of view'.[6] Groups such as the Howard League and the National Campaign are generally small in size, poor in finances, and unable to reap for their memberships any but intangible satisfactions. They are pressure groups based on shared attitudes and the advocacy of changes in public policy rather than interest groups held together by the desire to obtain benefits for their section of the community. This type of group rarely cuts a significant figure on the stage of politics; most of the time it fails to achieve the successes that come to the powerful sectional bodies such as trade unions, trade associations, professional societies and veterans' groups. The fact that usually to succeed it must appeal far beyond its normal membership base is itself indicative of the relative weakness of the attitude group when compared with those sectional groups that can boast of large and stable memberships, efficient bureaucracies and continuous access to high places.

The very nature of their purpose imposed upon the abolitionist groups special requirements. For example, they wanted a single important change—the elimination of the death penalty for murder —and would settle for nothing else. Thus although on occasion some of their supporters in Parliament were forced to accept compromises and half-measures, the abolitionist pressure groups refused consistently to have anything to do with the middle ground. Unlike many sectional groups, they were unable to deliver to their membership yearly dividends and occasional pieces of their programme. Indeed, their dedication to a single, indivisible goal was an element of strength, for most abolitionists were not to be dissuaded from their efforts by the promise of a negotiated peace. Furthermore, this single-mindedness was responsible for the abolitionist field being divided between two pressure groups: the older, multiple-purpose, research-oriented Howard League and the newer, single-issue, propagandist National Council and its successor, the National Campaign. Because they shared a common purpose, the two types of groups were able to supplement rather than compete with each other, so that in practice they were able to divide the labour, the Howard League providing much of the research, contacts with government and the world of criminology, and a reputation for integrity, and the Council and Campaign the larger membership, finances and propaganda. This particular symbiosis was made necessary by the fact that the Howard League was not equipped for or desirous of engaging in large-scale campaigns for abolition, especially since it felt that to do so would jeopardize its standing with the Home Office and prison officials and redound against its other penal reform activities.

Abolitionist groups initially were put at a disadvantage because they were unable to make use of two important elements of power in the British political system: parties and administration. Students of recent trends in that system are agreed that the simultaneous rise of centralized party government and the administrative state have shifted the loci of political power strongly toward these institutions, and that the most successful pressure groups are those that have continuous access to party leaders and key figures in the ministries. It was in these realms that the abolitionists were the weakest. In the first phase of the struggle in the late 1940's, they were unable to convince the leadership of either major party of the desirability of abolition, and they were forced to fall back upon the lesser weapons of backbenchers and the myth of non-partisanship. Most of their efforts to achieve their aims by exerting pressure upon administrative officials were also unavailing, partly because the basic change that they wanted required not administrative but Parliamentary action and partly because the ministry responsible for administering capital punishment policy, the Home Office, was also the ministry responsible for police and prison services in Britain and thus more likely to react to the 'inside' retentionist pressures of organizations of these officials than to the 'outside' pressures of the abolitionists. Ironically, although it was engaged in continuous consultation with the Home Office and the Prison Commissioners, the Howard League was unable to use its many administrative contacts to advantage on this issue.

In order to overcome these weaknesses, the abolitionist pressure groups turned to the dual tasks of converting Parliamentary and public opinion. As has been indicated earlier, the outside organizations played a secondary role in the conduct of strategy in the House of Commons, operating chiefly as servicing units for the Parliamentary leadership and as instruments for the creation of sympathetic public attitudes. This meant that they had to launch and carry out campaigns. Here again the established pressure group in this field, the Howard League, was inadequate to the need, and an awareness of this special problem by 'lay' abolitionists such as Gollancz and Koestler led to the creation of the National Campaign and its manifold attention-getting tactics. Unshackled by the limited budgets, sensitivity to administrative opinion, and primness of its predecessors, the National Campaign proved that a group of relative newcomers could be better organizers of mass opinion than 'professional' abolitionists of several decades' standing.

It is a sign of the comparative weakness of attitude groups that, in contrast to most sectional pressure groups, they must often resort to burdensome and unpredictable mass campaigns. The power contrast does not end here, either. If the abolitionist experience is in

any way representative of that of attitude groups in general, these groups are less potent than sectional groups because they do not really have an identifiable clientele or possess much control over their subject matter. When they are dealing with questions such as the murder rate, attitude groups must grapple with human behaviour over which their own small membership can have little control. The Howard League and the National Campaign might hope that if their goal were achieved, i.e., if the death penalty were abolished, the incidence of murder would drop markedly. But until that time arrived these groups were at the mercy of events that were clearly beyond their control. Almost by accident several murder cases broke favourably for the abolitionist cause in the mid 1950's, and the pressure groups were able to use them to great advantage; but it is equally possible that in the future other murder cases will offer equally rich opportunities for persons and groups favouring the stiffening of the use of hanging. When compared to the possibilities for control over their domains possessed by, for example, trade union and organized business groups, the domestic base of attitude group power seems slight indeed.

A further difficulty for attitude groups such as the abolitionists grows out of their generally small size, lack of economic power, and sporadic success in gaining the attention of the public. It is their inability to threaten official groups with political or economic consequences for any refusal to accede to their demands. Because the capital punishment question lay beyond the established programmes of the political parties, it scarcely carried weight in electoral terms, and groups such as the abolitionists were unable to raise the prospect of penalizing retentionist M.P.s at the polls. (More important than the polls, in fact, were the M.P.s' constituency associations, whose memories for matters such as these were much sharper than the electors'.) Nor could the abolitionist groups threaten to or actually withhold essential services from the Government and the community, as is occasionally possible in the case of unions and employers' confederations.[7] They had few services to render in the first place. The prospect of the Howard League refusing its cooperation and bringing a Government to its knees over the death penalty issue is ludicrous to contemplate.

It is difficult to escape the conclusion that compared to most interest groups operating in Britain today the abolitionist organizations had little to work with except ideas. These ideas were hoary with age and not even 'packaged' or communicated in a strikingly new manner. But they possessed a potency that grew as the outside climate changed from unfavourable to uncertain. As intermediaries between the ideas and the process of government the various pressure groups performed essentially four main functions.

First, they kept the death penalty issue alive. In the past century and a half the issue has had full-scale Parliamentary consideration on no more than a half-dozen occasions, with large gaps in between. Even in the years examined here, there was no automatic guarantee that the issue would not disappear from view once again for many decades. It was a basic task of the abolitionist groups, along with interested M.P.s, to maintain the requisite organization, research activity, and propagandistic effort to insure that Parliament and the public were not allowed to forget. For an attitude group to lose a wide audience for its ideas would be fatal.

The second function performed by these groups was in a sense a negative one. This was to prevent the cause of abolition from getting the crackpot label. All too often reformist groups put themselves beyond the pale of the political process by becoming identified with harmless or questionable fringe elements in society. Respectability sometimes is attached to numbers, but also (when numbers are not available) to association with prominent and respected sectors of the community. In their search for the power of respectability abolitionist organizations employed several techniques. They emphasized the empirical nature of their case and went out of their way to dissociate themselves from highly emotional and sensational appeals, which they feared would earn them the label of 'mere sentimentalists' in Parliament. They made fairly conspicuous use of the resources of the Howard League, an organization known for its responsible approach to penal reform. They took special pains to include in their membership persons of avowed conservative views, such as a number of Tory humanitarians, peers and social leaders. In the public image of the abolitionists the 'friends of Princess Margaret' partially offset 'Mr Silverman and his friends'. Indeed, by the beginning of 1956 the cause of abolition had become an acceptable outlet for the reforming energies of Britons of all classes, not merely those of a few middle-class ladies.

The pressure groups performed a third function, that of mobilizing favourable public opinion and providing outside support for the small band of abolitionists in Parliament. To this group of backbenchers such support was politically and psychologically necessary in their arduous uphill struggle. As intermediaries between the mass public and the forces in Parliament, the pressure groups served in the dual capacity of registering to Parliament what outside support there was and of conveying to sympathizers in the public the specific actions they could take to strengthen the hand of the political leadership.

A fourth role was forced on the abolitionist pressure groups by the general inability of political parties in a two-party system to adopt and press unpopular ideas. It has been observed that the

impetus in such a system is toward compromise and the integration of viewpoints in such a way that, had they no other outlet, strongly-felt ideas would be in constant danger of disappearing or being hopelessly blunted. As Professor Eckstein has said, 'In attempting to win mass support, necessarily from a large variety of groups [political parties] do not so much 'aggregate' opinions . . . as reduce them to their lowest and vaguest denominators, sometimes distorting the perspectives and goals they seek to mobilize out of all recognition'.[8] By entering terrain on which the parties feared to tread, the abolitionist groups were able to present to Parliament ideas and choices that its Members might have avoided facing in the normal course of party government. The capital punishment controversy confirms the view that a viable political system requires the complementary activities of parties and pressure groups.

Despite what has just been said, it would be a mistake to put too high the overall effect of pressure group behaviour on the outcome of the political events chronicled here. Ideas and events were more crucial than the actions of groups, and happenings inside Parliament generally overshadowed those on the outside. To cite just one example, it will be recalled that in spite of the general uneasiness about his reputation and the desire of outside groups to replace him with a moderate, Sydney Silverman was able to maintain his leadership of the abolitionist group in the Commons throughout the struggle. The lines of influence were many and not susceptible to scaling. A paradigm of the forces at work in these decisions would have to include the four-cornered relationship between (1) the structure of government, (2) pressure group behaviour, (3) the weight of public opinion, and (4) the events of history, including the formulation of the classic cases for and against capital punishment and the murder cases that called them into play in this period. In other words, this case study is testimony to the validity of multiple causation in politics and a warning against the temptation to view the political process in Britain as altogether easy and coherent.

THE FUTURE OF THE CONTROVERSY

The conflict over the fate of capital punishment cut more deeply into British life during the years from 1945 to 1957 than at any time since the first two decades of the nineteenth century. It would be foolish to suppose that the passage of the Homicide Act of 1957 spelled an end to the ferment. Many of the emotions called forth by these recent events were assuaged or exhausted by the time the Act went into effect; but there remains more than just a residue, and it is highly likely that the struggle to unmake or remake the Act will go on for many years.

No effort has been made in these pages to trace the reaction to the Homicide Act after its promulgation or any of the events in this continuing story beyond March 1957. Mention should be made, however, of two not very surprising developments: the continuing dissatisfaction with the liberalizing features of the Act on the part of pure retentionists and the continuing dissatisfaction of pure abolitionists with the traditional elements of it. A compromise such as emerged here is bound to be unacceptable to those who fought hard for a total principle. Thus in the years since 1957 we have seen several attempts (none successful) to persuade Parliament to modify the Homicide Act in the direction of greater use of the death penalty and to resurrect corporal punishment, and equally concerted action to keep alive the alternative of complete abolition. The National Campaign for the Abolition of Capital Punishment remains in existence (with a cousin of the Queen serving as chairman of its Committee of Honour) and can be expected to press its case on the public and Parliament for years to come. It is also likely to insist upon the non-partisan character of its cause so long as the prospect of Labour's return to power seems distant. With fewer hangings occurring in Britain these days, each individual case is bound to raise the question of the merits of capital punishment in a way only the more unusual or bizarre cases of the past were able to do.

If the time should come soon when another full-scale examination of the role of capital punishment in British life seems necessary, one suspects that the next round of the struggle will centre on substantially the same arguments but in a quite different political context than that described in these pages. It may even be that a few political lessons will be learned from the strange interlude of 1945-57.

NOTES

[1] For discussion of the relationship between the tactics of interest groups and the size of the public on various issues, see David Truman, *The Governmental Process* (New York, 1951), pp. 355-362.

[2] This point is stressed by Samuel H. Beer, 'Pressure Groups and Parties in Britain,' *American Political Science Review* 50 (March 1956), pp. 1-23; J. D. Stewart, *British Pressure Groups: Their Role in Relation to the House of Commons* (Oxford, 1958), esp. chapters II and VI; and Harry Eckstein, *Pressure Group Politics: The Case of the British Medical Association* (London, 1960), chapter I.

[3] For example, the relationship between the Home Office and the Howard League described in Chapter 1 is largely an informal link at the administrative level, but it is crucial for the determination of the direction of penal policy.

[4] 'We have moved so far, in Britain at any rate, from the principle of the separation of the legislative and executive powers, that there is a widely-held supposition . . . that the Government of the day, because it will be responsible for administering any new Act of Parliament, ought not to be

expected to have to take responsibility for administering any new Act that it had not itself decided to introduce. The obverse side of this argument is that it is wrong for individual Members of Parliament, as individuals, to introduce measures for the administration of which they will themselves have no responsibility.' P. A. Bromhead, *Private Members' Bills in the British Parliament* (London, 1956), p. 3.

[5] Especially in the works of Beer, Stewart and Eckstein cited in footnote 2, and S. E. Finer, *Anonymous Empire* (London, 1958).

[6] 'Attitude Groups,' *Political Quarterly* 29 (January-March, 1958), p. 72.

[7] See S. E. Finer, *op. cit.*, Chapter IX, and Arnold Rogow and Peter Shore, *The Labour Government and British Industry* (Oxford, 1955).

[8] Eckstein, *op. cit.*, p. 162. For a discussion of the aggregate function of interest groups, see Gabriel A. Almond and James S. Coleman, eds., *The Politics of the Developing Areas* (Princeton, 1960), pp. 38-45.

SELECTED BIBLIOGRAPHY

As indicated in the body of the study, the preceding observations were based chiefly on materials found in the debates of Parliament, press accounts and commentaries, private files, and interviews with persons active in phases of the controversy. The list of titles that follows contains only a small segment of the sources on the subject, chosen because they constitute an easily accessible introduction to the subject of capital punishment in contemporary Britain.

ALTRINCHAM, LORD, and IAN GILMOUR, *The Case of Timothy Evans: An Appeal to Reason,* London, n.d.

BROMHEAD, P. A., *The House of Lords and Contemporary Politics,* 1911-1957, London, 1958. Chapter XVI.

CALVERT, E. ROY, *Capital Punishment in the Twentieth Century,* 5th ed., London, 1936.

EDDOWES, MICHAEL, *The Man on Your Conscience: An Investigation of the Evans Murder Trial,* London, 1955.

GARDINER, GERALD, *Capital Punishment as a Deterrent: and the Alternative,* London, 1956.

GOLLANCZ, VICTOR, *Capital Punishment: The Heart of the Matter,* London, 1955.

GOWERS, SIR ERNEST, *A Life for a Life?* London, 1956.

HENDERSON, J. SCOTT, *Inquiry into the Case of Rex v. Evans and the Case of Rex v. Christie,* Cmd. 8896, H.M.S.O., 1953.

INNS OF COURT CONSERVATIVE AND UNIONIST SOCIETY, *Murder: Some Suggestions for the Reform of the Law Relating to Murder in England,* London, 1956.

KENNEDY, LUDOVIC, *Ten Rillington Place,* London, 1961.

KOESTLER, ARTHUR, *Reflections on Hanging,* London, 1956.

NICOLSON, NIGEL, *People and Parliament,* London, 1958. Chapter 4.

PAGET, R. T. and SYDNEY SILVERMAN, *Hanged—and Innocent?* London, 1953.

RADZINOWICZ, LEON, *A History of English Criminal Law and Its Administration from* 1750, Vol. I, London, 1948.

Report from the Select Committee on Capital Punishment, H.M.S.O., 1931.

Report of the Royal Commission on Capital Punishment, Cmd. 8932, H.M.S.O., 1953.

ROSE, GORDON, *The Struggle for Penal Reform: The Howard League and Its Predecessors,* London and Chicago, 1961.

TEMPLEWOOD, VISCOUNT, *The Shadow of the Gallows,* London, 1951.

TUTTLE, ELIZABETH ORMAN, *The Crusade Against Capital Punishment in Great Britain,* London and Chicago, 1961.

APPENDIX 1

Major Provisions of the Homicide Act, 1957
5 & 6 Eliz. 2, Ch. 11

An Act to make for England and Wales (and for courts-martial wherever sitting) amendments of the law relating to homicide and the trial and punishment of murder, and for Scotland amendments of the law relating to the trial and punishment of murder and attempts to murder.

(21st March, 1957)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

AMENDMENTS OF LAW OF ENGLAND AND WALES AS TO FACT OF MURDER

Abolition of 'constructive malice.'

1.—(1) Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course of furtherance of another offence.

(2) For the purposes of the foregoing subsection, a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course of furtherance of an offence.

Persons suffering from diminished responsibility.

2.—(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

Provocation.

3.—Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

Suicide pacts.

4.—(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section 'suicide pact' means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

PART II

LIABILITY TO DEATH PENALTY

Death penalty for certain murders.

5.—(1) Subject to subsection (2) of this section, the following murders shall be capital murders, that is to say,

(a) Any murder done in the course or furtherance of theft;

(b) Any murder by shooting or by causing an explosion;

(c) Any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;

(d) Any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;

(e) In the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.

(2) If, in the case of any murder falling within the foregoing subsection, two or more persons are guilty of the murder, it shall be capital murder in the case of any

of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used force on that person in the course or furtherance of an attack on him; but the murder shall not be capital murder in the case of any other of the persons guilty of it.

(3) Where it is alleged that a person accused of murder is guilty of capital murder, the offence shall be charged as capital murder in the indictment, and if a person charged with capital murder is convicted thereof, he shall be liable to the same punishment for the murder as heretofore.

(4) In this Act 'capital murder' means capital murder within subsections (1) and (2) of this section.

(5) In this section:

(a) 'police officer' means a constable who is a member of a police force or a special constable appointed under any Act of Parliament, and 'police force' has the same meaning as in section 30 of the Police Pensions Act, 1921 (as amended by the Police Act, 1946) or, as regards Scotland, the same meaning as in section 40 of the Police (Scotland) Act, 1956;

(b) 'prison' means any institution for which rules may be made under the Prison Act, 1952, or the Prisons (Scotland) Act, 1952, and any establishment under the control of the Admiralty or the Secretary of State where persons may be required to serve sentences of imprisonment or detention passed under Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955;

(c) 'prison officer' includes any member of the staff of a prison;

(d) 'prisoner' means a person who is undergoing imprisonment or detention in a prison, whether under sentence or not, or who, while liable to imprisonment or detention in a prison, is unlawfully at large;

(e) 'theft' includes any offence which involves stealing or is done with intent to steal.

Death penalty for repeated murders.

6.—(1) A person convicted of murder shall be liable to the same punishment as heretofore, if before conviction of that murder he has, whether before or after the commencement of this Act, been convicted of another murder done on a different occasion (both murders having been done in Great Britain).

(2) Where a person is charged with the murder of two or more persons, no rule of practice shall prevent the murders being charged in the same indictment or (unless separate trials are desirable in the interests of justice) prevent them being tried together; and where a person is convicted of two murders tried together (but done on different occasions), subsection (1) of this section shall apply as if one conviction had preceded the other.

Abolition of death penalty for other murders.

7.—No person shall be liable to suffer death for murder in any case not falling within section five or six of this Act.

Courts-martial

8.—(1) The foregoing provisions of this Part of this Act shall not have effect in relation to courts-martial, but a person convicted by a court-martial of murder or of an offence corresponding thereto under section 70 of the Army Act, 1955, or of the Air Force Act, 1955) shall not be liable to suffer death, unless he is charged with and convicted of committing the offence under circumstances which, if he had committed it in England, would make him guilty of capital murder.

(2) An accused so charged before a court-martial under the Naval Discipline Act may, on failure of proof of the offence having been committed under such circumstances as aforesaid, be found guilty of the murder as not having been committed under such circumstances.

Punishment for murders not punishable with death, and other consequential provisions.

9.—(1) Where a court (including a court-martial) is precluded by this Part of this Act from passing sentence of death, the sentence shall be of life imprisonment.

(2) Accordingly paragraph (a) of subsection (3) of section 70 of the Army Act, 1955, and of the Air Force Act, 1955, and the first paragraph of section 45 of the Naval Discipline Act, shall each be amended by the addition, at the end of the paragraph, of the words 'or, in a case of murder not falling within section 8 of the Homicide Act, 1957, imprisonment for life.'

(3) In section 53 of the Children and Young Persons Act, 1933, and section 57 of the Children and Young Persons (Scotland) Act, 1937, there shall be substituted for subsection (1):

'(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence who appears to the court to have been under the age of eighteen years at the time of the offence was committed, nor shall any such person be sentenced to imprisonment for life under section 9 of the Homicide Act, 1957; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure, if so sentence he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.'

(4) The provisions of the First Schedule to this Act shall have effect with respect to procedural and other matters arising out of sections 5 to 7 of this Act, and with respect to the convictions which may be taken into account under section 6.

[Omitted from this section are Part III, dealing with the form and execution of the death sentence; Part IV, containing special provisions for Scotland; and Part V, which exempts past offences from the provisions of the Act.]

APPENDIX 2

Chronology

1947	
November	Attlee Government introduces Criminal Justice Bill in House of Commons, without provision for abolition.
1948	
April 15	House of Commons passes Silverman abolition amendment to Criminal Justice Bill, 245-222.
June 2	House of Lords deletes abolition clause from Criminal Justice Bill, 181-28.
July 15	House of Commons passes Government's compromise death penalty clause, 307-209.
July 20	House of Lords rejects compromise clause, 99-19.
July 22	House of Commons agrees to eliminate death penalty clause from Criminal Justice Bill, 215-34.
July	National Council for the Abolition of the Death Penalty disbanded.
November 18	Prime Minister Attlee announces appointment of a Royal Commission on Capital Punishment.
1949-1953	Royal Commission meets.
1950	
March 9	Timothy Evans hanged for murder.
1953	
January 27	Derek Bentley hanged for murder.
July 1	Motion for leave to bring in a Bill to suspend the death penalty for five years defeated by House of Commons, 256-195.
July 6-13	Scott Henderson inquiry into Evans-Christie murder cases.
July 15	J. R. H. Christie hanged for murder.
September 23	Royal Commission on Capital Punishment issues Report.
December 16	House of Lords debates Report of Royal Commission.
1955	
February 10	House of Commons debate on Royal Commission Report results in defeat of abolitionist amendment, 245-214.
July 13	Ruth Ellis hanged for murder.
August	National Campaign for the Abolition of Capital Punishment founded.
November 8	Abolitionists lose opportunity to introduce Private Member's Bill.
November 10	Government rejects all major recommendations of the Royal Commission.
November 16	Silverman abolition Bill given First Reading in House of Commons under the Ten Minute Rule.
November 19	Silverman Bill fails to receive Second Reading.

APPENDIX TWO

1956	
January	Conservative Inns of Court Society publishes *Murder*.
February 16	House of Commons rejects Government motion to amend law of murder and passes abolitionist motion, 293-262.
February 23	Prime Minister Eden promises Government facilities and free vote for stages of Silverman Bill.
March 12	House of Commons gives Silverman Bill its Second Reading, 286-262.
April-June	Silverman Bill passes successfully through Committee Stage.
June 28	House of Commons gives Silverman Bill its Third Reading, 152-133.
July 10	House of Lords rejects Silverman Bill, 238-95.
Summer	Government and constituency pressure on Conservative abolitionists.
October	Conservative Party Annual Conference passes resolutions opposing abolition but favouring limiting the imposition of the death penalty.
November 8	Government announces its Homicide Bill and offers no facilities for Silverman Bill.
November 15	Abolitionists fare poorly in balloting for Private Member's Bills.
November 16	House of Commons gives Homicide Bill unopposed Second Reading.
1957	
January	Homicide Bill passes through committee stage unaltered.
February 1	Private Member's abolition Bill fails to receive Second Reading in House of Commons.
February 6	House of Commons gives Third Reading to Homicide Bill, 217-131.
March 19	House of Lords passes Homicide Bill.
March 21	Homicide Bill receives Royal Assent and becomes the Homicide Act, 1957.

INDEX